

Version No. 024
Supreme Court Act 1986

Act No. 110/1986

Version incorporating amendments as at 1 July 1998

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Version No. 024
Supreme Court Act 1986
Act No. 110/1986

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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—

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

¹"**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 present;

"**costs**" includes fees, charges and disbursements;

"**Court**" means the Supreme Court;

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

²"**Court of Appeal**" means the division of the Court called the Court of Appeal;

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"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 a legal practitioner or interstate practitioner within the meaning of the **Legal Practice Act 1996**); 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
- (d) any sheriff or other person acting in execution of any warrant or other process of the Court;

S. 3(1) def. of "court official" amended by No. 35/1996 s. 453(Sch. 1 item 80.1(b)), 102/1997 s.49(Sch. item 5).

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

* * * * *

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 of "Full Court" repealed by No. 109/1994 s. 18(c)³.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**;

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

"judgment" includes order;

"landlord" includes a lessor;

* * * * *

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 of "Law Institute" repealed by No. 35/1996 s. 453(Sch. 1 item 80.1(a)).

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S. 3(1) def. of
"Master"
substituted by
No. 109/1994
s. 18(e).

⁵"**Master**" means a Master of the Supreme Court referred to in section 75(4) of the **Constitution Act 1975**;

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repealed by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

* * * * *

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

"**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).

⁶"**President**" means the President of the Court of Appeal;

"**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)).

* * * * *

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

"**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;

⁷**"Trial Division"** means the division of the Court called the Trial Division;

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 General Rules of Procedure in Civil Proceedings 1986 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 General Rules of Procedure in Civil Proceedings 1986 apply must, despite anything in any Act or enactment, be commenced and conducted in accordance with those Rules and not otherwise.
- (5) A judgment in any proceeding must be enforced in accordance with the General Rules of Procedure in Civil Proceedings 1986 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 sub-section (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) Sub-section (6) does not apply to a reference to a writ of habeas corpus.

4. *Abolition of distinction between court and chambers*

- (1) The distinction between court and chambers is abolished.
- (2) Nothing in sub-section (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.

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- (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) Sub-section (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

No. 6387 s. 50.

6. *Where Court to be held*

- (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.

No. 6387 s. 45.

7. *Time and place of sitting*

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

No. 6387
ss 48, 49.
Ss 8, 9
repealed by
No. 109/1994
s. 19⁸.

* * * * *

S. 9A
inserted by
No. 35/1996
s. 453(Sch. 1
item 80.2).

9A. *Robing of Judges*

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

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

Division 2—Court of Appeal⁹

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

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;
 - (b) all applications for new trials;
 - (c) all appeals from the County Court constituted by a Judge;
 - (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

- (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

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

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

Appeal.

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

- (1A) If the President of the Court of Appeal so determines in particular case, 2 Judges of Appeal 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).

- (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.

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

- (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.

S. 11(5)
amended by
No. 64/1996
s. 41(2).

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

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

- (6) Subject to sub-section (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.

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

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.

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

14. Power of Court of Appeal on civil appeals

- (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.

No. 6387
ss 39, 40.
S. 14
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

No. 6387
ss 37, 44.
S. 15
substituted by
No. 109/1994
s 20.

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.

Pt 2 Div. 2A
(Heading)
inserted by
No. 109/1994
s. 20.

Division 2A—Trial Division¹⁰

No. 6387
s. 19A.
S. 17
substituted by
No. 109/1994
s. 20.

17. *Business to be disposed of by Trial Division constituted by a Judge*

- (1) The Trial Division constituted by a Judge 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.

- (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.

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—

- (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 constituting the Trial Division which made the order.

- (2) An order made by the Trial Division constituted otherwise than by a Judge—

- (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 except by leave of the Trial Division constituted by a Judge or by leave of the person constituting the Trial Division which made the order.

- (3) Except as provided in Part VI of the **Crimes Act 1958**, an appeal does not lie from a determination of the Trial Division constituted by a Judge made on or in relation to the trial or proposed trial of a person on indictment or presentment.

- (4) 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 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, 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;
 - (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 Law or the **Companies (Victoria) Code** in respect of misfeasance or otherwise;
 - (iv) a decision dismissing a proceeding for want of prosecution;
 - (v) such cases prescribed by the Rules as in the opinion of the Judges making the Rules are of the nature of final decisions.
- (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.
- (7) An application for leave to appeal may be made without notice to any other party unless the Court of Appeal or the Judge constituting the Trial

Division which gave the judgment otherwise directs.

17B. Reference of matters to Court of Appeal

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

- (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 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.

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).

S. 19(e)
inserted by
No. 8/1991
s. 19(1).

- (e) ¹¹cause undue distress or embarrassment to the complainant in a proceeding that relates to a charge for an offence under Subdivision
-

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(8A), (8B), (8C), (8D) or (8E) of Division 1
of Part I of the **Crimes Act 1958** or under
any corresponding previous enactment or for

an attempt to commit any such offence or an assault with intent to commit any such offence.

No. 6387
s. 29A.

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 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.

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

20A. Power to act in cases relating to rates and taxes¹²

- (1) A 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.

No. 6387 s. 33.

21. Vexatious litigants

- (1) The Attorney-General may apply to the Court for an order declaring a person to be a vexatious litigant.

Supreme Court Act 1986

Act No. 110/1986

s. 21

(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—

S. 21(2)
amended by
No. 64/1996
s. 42(1).

- (a) habitually; and
- (b) persistently; and
- (c) without any reasonable ground—

instituted vexatious legal proceedings in the Court, an inferior court or a tribunal against the same person or different persons.

(3) An order under sub-section (2) may provide that the vexatious litigant must not without leave of—

S. 21(3)
substituted by
No. 64/1996
s. 42(2).

- (a) the Court; or
- (b) an inferior court; or
- (c) a tribunal constituted or presided over by a person who is a barrister and solicitor of the Court—

do the following—

- (d) continue any legal proceedings in the Court, inferior court or tribunal; or
- (e) commence any legal proceedings in the Court or any specified inferior court or tribunal; or
- (f) commence any specified type of legal proceedings in the Court or any specified inferior court or tribunal.

(4) Leave must not be given unless the Court, or if the order under sub-section (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(4)
substituted by
No. 64/1996
s. 42(2).

Supreme Court Act 1986

Act No. 110/1986

s. 22

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 sub-section (2) if it considers it proper to do so.
- (6) The Attorney-General must cause a copy of any order made under sub-section (2) to be published in the Government Gazette.
- (7) The Court, when exercising a power under this section, must be constituted by a Judge.

No. 6387 s. 30.

22. *Execution of instruments by order of Court*

- (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 sub-section (1) operates and is for all purposes available as if it had been executed or indorsed by the person originally directed to do so.

No. 6387
s. 24A.

23. *Attachment of earnings*

- (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.

24. Costs to be in the discretion of Court

No. 6387 s. 32.

- (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.

24A. Mediation¹³

S. 24A
inserted by
No. 64/1996
s. 43.

Where the Court refers a proceeding or any part of a proceeding to mediation, 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.

Division 4—Court Rules

25. Power to make Rules¹⁴

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:
 - (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 a Master;

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

Supreme Court Act 1986

Act No. 110/1986

s. 25

S. 25(1)(c)
amended by
No. 109/1994
s. 22(a)(i)(ii).

(c) Appeals by way of rehearing or otherwise to the Trial Division of the Court constituted by a Judge from the Trial Division constituted by a Master or from a Master of the County Court;

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

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

(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;

(e) The reference of any question arising in a proceeding to a special referee or officer of the Court for decision or opinion;

S. 25(1)(ea)
inserted by
No. 64/1990
s. 7(1).

(ea) The reference of any proceeding or of any part of a proceeding to mediation or arbitration;

S 25(1)(eb)
inserted by
No. 4/1997
s. 5.

(eb) ¹⁵requirements for the purposes of Part IIA of the **Evidence Act 1958** for or with respect to—

(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) ¹⁶applications to the Court under Division 2 or 3 of Part IIA of the **Evidence Act 1958**;
 - (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.
- (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.

S. 25(1)(ec) inserted by No. 4/1997 s. 5.

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**) present at a meeting held for that purpose.

No. 6387 s. 26.
S. 26 amended by No. 9/1995 s. 7(5).

27. Disallowance of Rules

The Rules are subject to disallowance by the Parliament.

No. 6387 s. 27.

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

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) Sub-section (1) applies despite anything to the contrary in the **Commercial Arbitration Act 1984**.

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

Division 5—Council of Judges

No. 6387 s. 28.

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—
 - (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.

Supreme Court Act 1986

Act No. 110/1986

s. 28

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- (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**.
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S. 28(4)
amended by
No. 9/1995
s. 7(5).

PART 3—CONCURRENT ADMINISTRATION OF LAW AND EQUITYNo. 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.
- (2) Every court referred to in sub-section (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—

No. 6387
s. 61(5).

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.

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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 5—MISCELLANEOUS RULES OF LAW

Division 1—General

34. *Circumstances in which section 35 applies*

Section 35 applies—

- (a) where three or more persons have the right to the same or substantially the same relief against the same person and if separate proceedings were brought by each of them against that person in respect of that right, some common question of law or fact would arise in all the proceedings; and
- (b) whether or not all rights to relief are in respect of or arise out of the same transaction or series of transactions.

35. *Representative proceeding*

- (1) Despite any Act, law, rule or practice to the contrary, in the circumstances referred to in section 34, a proceeding may be commenced by any one or more of those persons as representing some or all of them.
- (2) All persons being represented in the proceeding—
 - (a) must, before the commencement of the proceeding, have consented in writing to being represented; and
 - (b) must be named in the process by which the proceeding is commenced.
- (3) The written consents referred to in sub-section (2)(a) must be filed in the Court at the same time as the process by which the proceeding is commenced is filed in the Court.

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- (4) After the commencement of a proceeding a person may become represented in the proceeding with the leave of the Court and the consent in writing of that person.
 - (5) The Court may in any particular case give directions concerning the conduct of the proceeding.
 - (6) A representative proceeding may be brought even if—
 - (a) the relief to which each person is entitled is or includes damages; or
 - (b) any damages to which any person is entitled will need to be assessed individually; or
 - (c) any person being represented could join or be added as plaintiff in the proceeding under any Act, law, rule or practice.

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 sub-section (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 sub-section (1) restraining a party to a proceeding from removing from Victoria or otherwise dealing with assets located within
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Victoria, whether or not that party is domiciled, resident or present within Victoria.

38. Damages in addition to or in place of other remedies

No. 6387
s. 62(3).

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) and (c) 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.

(2) For the purposes of sub-section (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) and (c) 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.

No. 6387 s. 80.

43. *The time of the 150th meridian to be standard time*

- (1) The mean time of the 150th meridian of longitude east of Greenwich in England is standard time throughout Victoria.
- (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 sub-section (1) unless it is otherwise specifically stated.

No. 6387 s. 63.

44. *Meaning of "month" in documents*

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 sub-section (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.
- (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 sub-section (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.
- (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

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- (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

49. *Certain contracts by minors to be void*

No. 6387 s. 69.

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 sub-sections (2) and (3), void against everyone.
- (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 sub-section (1) may recover from the minor the amount secured by the instrument.
- (3) If a person referred to in sub-section (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 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) Sub-section (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 sub-section (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 sub-section (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 seek 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.

(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.

No. 6387 s. 73.

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

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 sub-section (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**.

No. 6387 s. 78.

58. *Interest to be allowed when debts or sums certain recovered*

- (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.

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- (2) Sub-section (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

No. 6387
s. 79A.

- (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 sub-section (3).

Supreme Court Act 1986
Act No. 110/1986

s. 61

* * * * *

No. 6387
ss 83–86,
87(1)–(5), (6),
88.

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).

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

PART 6—MISCELLANEOUS POWERS

No. 6387
ss 89–92, 102.
Pt 6 Div. 1
(Heading and
ss 68, 69)
repealed by
No. 35/1996
s. 453(Sch. 1
item 80.4).

* * * * *

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

Division 2—Delivery of documents

No. 6387
ss 102, 93–96,
101, 100.
Ss 70–75
repealed by
No. 35/1996
s. 453(Sch. 1
item 80.6).¹⁷

* * * * *

No. 6387 s. 95.
S. 76
amended by
No. 35/1996
s. 453(Sch. 1
item 80.7).

76. *Power of Court to order legal practitioner or firm of legal practitioners to deliver bill of costs etc.*

The jurisdiction of the Court to make orders for the delivery by a legal practitioner or firm of legal practitioners of a bill of costs or for the delivery up of any documents in the possession, custody or power of a legal practitioner or firm of legal practitioners 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.

Division 3—Assistance of Assessors and Legal Practitioners

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

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.

78. Opinion of a legal practitioner

No. 6387
ss 111, 113.

- (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—

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

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

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

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

Division 4—Proceeding for Recovery of Land

No. 6387
ss 114, 116.

79. Proceeding by landlord if rent is in arrears

- (1) If—
- (a) 6 month's rent is in arrears; and
 - (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 sub-section (1) takes the place of a demand and re-entry.
- (3) If the Court is satisfied—
- (a) that 6 month's rent was in arrears before the proceeding was commenced; and
 - (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.
- (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—

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

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.

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

No. 6387
ss 115, 116.

- (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 sub-section (2)(a) if the parties cannot agree on its amount;
 - (b) order that any money brought into the Court under sub-section (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 sub-section (6) "**tenant**" includes the executor, administrator or assignee of a tenant.

No. 6387
s. 117.

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

- (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 sub-section (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 sub-section (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 sub-section (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 sub-section (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.

No. 6387
s. 118.

82. Provisions concerning securities

- (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.

No. 6387
s. 120.

83. Saving of former remedies

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

No. 6387
ss 121, 122.

84. Proceeding for recovery of land by mortgagee

- (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.
- (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

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

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.

Division 5—Relief from Forfeiture

No. 6387
s. 123.

85. *Relief against forfeiture for non-payment of rent*

- (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 sub-section (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.

87. Court may order arrest

No. 6387
s. 128.

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.

88. Security to be given by defendant

No. 6387
s. 136.

- (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 sub-section (2) within the time stated in that sub-section, the security is to be taken to be sufficient.

No. 6387
s. 137.

89. Control of the Court

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

No. 6387
ss 129, 130.

90. Making of order to arrest

- (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.

No. 6387
s. 130.

91. Defendant may apply for relief

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.

92. Endorsement on order

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. 131.
S. 92
amended by
No. 35/1996
s. 453(Sch. 1
item 80.10).

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—

No. 6387
s. 132.

(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(a)
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.

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

94. Execution on a Sunday

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

No. 6387
s. 133.

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.

No. 6387
s. 134.

96. Misdescription of defendant

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

No. 6387
s. 135.

(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.

No. 6387
s. 138.

97. *Costs*

- (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.

No. 6387
s. 139.

98. *Discharge of defendant*

- (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 solicitor 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.

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.

100. Fees

No. 6387
s. 141.

- (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 sub-section (1).

Division 7—Interest on Judgment

101. Interest on judgment

No. 6387
s. 161.

- (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 taxable by the Taxing Master, from the date of the order of the Taxing Master stating the result of the taxation 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 sub-section (2), a minor must not be made a ward of Court except by order of the Court constituted by a Judge.
- (2) If application is made for an order under sub-section (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.

Division 9—Quashing By-laws

No. 6387
s. 178.

103. Proceeding to test legality of by-laws

- (1) A person who pays into court the sum of \$500 as security for costs may apply to the Court constituted by a Judge 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;

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

PART 7—OFFICERS

Division 1—Appointments

104. *Power to appoint Masters*¹⁸

- (1) A Senior Master, one or more Masters, a Registrar of the Court of Appeal, a Listing Master, a Registrar of Criminal Appeals and a Taxing Master are to be appointed by the Governor in Council.
- (2) No new office is to be created in the Court unless the Chief Justice certifies that a majority of the Judges are of the opinion that it should be created.
- (3) A person must not be appointed as Senior Master, Master, Registrar of the Court of Appeal, Listing Master, Registrar of Criminal Appeals or Taxing Master unless that person is a barrister and solicitor of not less than five years standing.
- (3A) A Master 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 on the address of both Houses of Parliament; or
 - (c) if he or she is not capable of continuing in office because of sub-section (5).
- (4) The Senior Master, Masters, Registrar of the Court of Appeal, Listing Master, Registrar of Criminal Appeals and Taxing Master are—

No. 6387
s. 180.
S. 104
amended by
No. 64/1990
s. 3(a).
S. 104(1)
amended by
No. 109/1994
s. 22(c).

S. 104(3)
amended by
No. 109/1994
s. 22(d).

S. 104(3A)
inserted by
No. 64/1990
s. 3(b).

S. 104(4)
amended by
No. 109/1994
s. 22(e).

Supreme Court Act 1986

Act No. 110/1986

s. 104

S. 104(4)(a)
amended by
No. 22/1995
s. 20(1).

S. 104(4)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 104(6)
inserted by
No. 109/1994
s. 22(2).

S. 104(7)
inserted by
No. 109/1994
s. 22(2).

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

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

(a) entitled to such salary and allowances as are payable under section 83A of the **Constitution Act 1975**; and

(b) not subject to the **Public Sector Management and Employment Act 1998**.

(5) A person who has attained the age of 70 years is not capable of being appointed to or, subject to section 139(1), continuing in an office referred to in this section.

(6) A person appointed under this section to the office of Registrar of the Court of Appeal or the office of Registrar of Criminal Appeals may, at the same or a later time, also be appointed to the other of the 2 offices and hold both offices concurrently.

(7) 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

(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.

104A. *Pension entitlements of Masters, their spouses and children*

(1) A Master who—

(a) has attained—

(i) the age of 65 years; or

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

Supreme Court Act 1986

Act No. 110/1986

s. 104A

and has held office for at least 10 years; or

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

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

(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.

(1A) A Master who—

S. 104A(1A)
inserted by
No. 22/1995
s. 20(3).

(a) had attained the age of 60 years when appointed as a Master; 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 a Master.

(1B) A Master who—

S. 104A(1B)
inserted by
No. 22/1995
s. 20(3).

(a) had attained the age of 60 years when appointed as a Master; and

(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 a Master or a former Master his or her spouse is, until death or remarriage, entitled to a pension payable fortnightly at the annual rate of $\frac{3}{8}$ ths of the annual salary for the time being applicable to the Master's former office.
- (3) A pension is not payable under sub-section (2) to the spouse of a Master or former Master where the marriage took place after the Master's resignation or retirement.
- (4) On the death of a Master or a former Master in respect of whom no pension is payable under sub-section (2) any eligible child of the Master or former Master is entitled to a pension payable fortnightly at the annual rate set out in sub-section (2) divided by 4 or the number of eligible children, whichever is the greater.
- (5) An eligible child of a Master or former Master is a child, adopted child or stepchild of the Master 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 sub-section (4) shall be paid to such person or persons as the Attorney-General directs.
- (7) The right of a former Master 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 the practice of the profession of a barrister or solicitor in any State or Territory of the Commonwealth or is employed by a barrister or solicitor in connection with the barrister or solicitor's practice in any such State or Territory.
 - (8) Sub-section (7) applies unless the Governor in Council by Order otherwise determines in any particular case.
 - (9) A Master retires for the purposes of this section only if he or she ceases to hold office in the circumstances described in section 104(3A)(c).
 - (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**.
 - (11) Pensions under this section are payable out of the Consolidated Fund which is appropriated to the necessary extent.

105. Acting appointments¹⁹

No. 6387
s. 181.

- (1) If an office referred to in section 104 becomes vacant, the Governor in Council may appoint a qualified person to act in that office.
- (2) An appointment under sub-section (1) is for the term (not exceeding six months) specified in the instrument of appointment.
- (3) A person appointed under sub-section (1) 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.
- (4) The Governor in Council may appoint a qualified person to act in the place of the Senior Master, Master, Registrar of the Court of Appeal, Listing

S. 105(4)
amended by
No. 109/1994
s. 22(3).

Master, Registrar of Criminal Appeals or Taxing Master if that person is absent or temporarily unable to perform the duties of office.

- (5) If the Senior Master is absent, a Master 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.

No. 6387
s. 182.

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

S. 106
amended by
No. 46/1998
s. 7(Sch. 1).

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 Sector Management and Employment Act 1998**—

S. 106(a)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) a chief executive officer, a prothonotary, a registrar of probates, a sheriff and such other employees as are necessary; and
- (b) as many deputy prothonotaries, assistant registrars of probates and deputy sheriffs as are required to assist in the administration of justice.

No. 6387
s. 183.

107. Certain office holders to be deputies

- (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 or a deputy sheriff.
- (2) A person who is the subject of an Order under sub-section (1)—
- (a) has the duties and powers specified in the Order; and
- (b) for the purposes of this Act is to be taken to be appointed as deputy prothonotary or deputy sheriff, as the case requires.

108. Powers of deputies

No. 6387
s. 184.

- (1) A person appointed as deputy prothonotary or deputy sheriff has the duties and powers specified in the terms of that person's appointment.
- (2) Anything done by a deputy prothonotary or deputy sheriff is as valid and effective as if it had been done by the prothonotary or sheriff and no person need be concerned to inquire whether any action is within the terms of a deputy's authority.

109. Appointment of bailiffs and assistant bailiffs

No. 6387
s. 185.

- (1) The Governor in Council may appoint any person (whether or not an officer of the public service) to be a bailiff for the purposes of this Act.
- (2) Without affecting the operation of sub-section (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 sub-section (2) may from time to time in writing appoint any member of the police force to assist him or her.

Division 2—Functions of the Masters

110. Functions of the Senior Master

No. 6387
s. 186.

The Senior Master is responsible for the administration of the business of the Masters and has the duties, powers and authorities imposed or conferred on him or her by or under this or any other Act.

111. Functions of the Masters

No. 6387
s. 187.

The Masters must assist in the general business of

the Court and perform the duties and exercise the powers and authorities imposed or conferred on them by or under this or any other Act.

S. 111A
inserted by
No. 109/1994
s. 23.

111A. *Functions of Registrar of the Court of Appeal*²⁰

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

- (a) the preliminary examination of all applications and appeals made to the Court of Appeal, except as provided under section 112(2);
- (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 or the Rules.

No. 6387
s. 188.

112. *Functions of the Listing Master, Registrar of Criminal Appeals and Taxing Master*²¹

(1) The Listing Master is, subject to the general direction and control of the Chief Justice, responsible for—

S. 112(1)(a)
substituted by
No. 109/1994
s. 24(a).

- (a) preparing the lists of business in the Trial Division;
- (b) taking such steps as he or she is authorised or required by the Chief Justice or the Rules to take to ensure the efficient and expeditious despatch of the business of the Court;
- (c) performing such other duties and exercising such other powers and authorities as are

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imposed or conferred on him or her by the Chief Justice or the Rules.

- (2) The Registrar of Criminal Appeals is, subject to the general direction and control of the Registrar of the Court of Appeal, responsible for—
- (a) the preliminary examination of all applications made to the Court of Appeal under Part VI of the **Crimes Act 1958** 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 the Rules.
- (3) The Taxing Master must tax and settle bills of costs and for that purpose has all the powers and authorities of the Court.

S. 112(2)
amended by
No. 109/1994
s. 24(b).

S. 112(2)(a)
amended by
No. 109/1994
s. 24(c).

S. 112(2)(b)
amended by
No. 109/1994
s. 24(b)(c).

S. 112(2)(c)
amended by
No. 109/1994
s. 24(b).

113. Common Funds

No. 6387
s. 189.

- (1) Subject to section 66 of the **Guardianship and Administration Act 1986**, 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.
- (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**, there may be established, by and in accordance with the Rules or under sub-section (26), more Common Funds,

S. 113(1)
amended by
No. 52/1998
s. 311(Sch. 1
item 88.2).

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.

(4) Money held by the Senior Master, including money forming part of a Common Fund, may be invested—

(a) on deposit with the State Bank of Victoria; or

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

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

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 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.

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- (8) Subject to sub-section (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.
 - (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) 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.

- (13) Interest received from the investment of money forming part of a Common Fund 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 sub-section (14).
- (14) On each amount at credit in a Common Fund 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—
- (a) the source and nature of the different amounts transferred to a Common Fund;
 - (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 must also be carried to the credit of the Common Funds Guarantee and Reserve Account.
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- (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;
 - (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 sub-section (18) may be invested—
- (a) in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958** or any other Act; or
 - (b) on deposit with the State Bank of Victoria—
and all interest received from that investment must be paid into the Common Funds Guarantee and Reserve Account.
- (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
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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 sub-section (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 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.
- (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 bank by the deposit by way of equitable mortgage of any securities held by the Senior Master in respect of investments from the Common Fund.
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- (25) The aggregate amount of advances made to the Common Funds by any banks and outstanding at any one time must not exceed \$1 000 000.
- (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 or the State Bank of Victoria 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 sub-section (8);
 - (c) the establishment and management of one or more Common Funds in which money held by the Senior Master may be invested.

S. 113(26)
amended by
No. 55/1987
s. 57(3).

Division 3—The Sheriff

114. *Definition*

In this Division "**sheriff**" includes a deputy sheriff.

115. *Functions of sheriff*

No. 6387
s. 190.

- (1) In addition to all other acts and duties required to be done by the sheriff by this or any other Act, the sheriff must—
- (a) execute and return all warrants and other process directed to the sheriff; and
 - (b) do all other acts and duties required by the common law to be done by a sheriff—

in the same manner (subject to any necessary modifications) as similar process was executed and returned, and as such acts and duties were done or required to be done, by the sheriff

immediately before the commencement of this Act.

- (2) If a sheriff, before going out of office, arrests a defendant and makes return accordingly, the sheriff may, within the time allowed by law, be ordered by the Court to bring in the defendant even if the sheriff is out of office before the order is made.
- (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.

No. 6387
s. 191.

116. *Sheriff may sell property without auctioneer's licence*

Despite anything in any Act, the sheriff may sell by auction all property taken by him or her in execution without having taken out an auctioneer's licence.

No. 6387
s. 192.

117. *Receipt for warrant*

The sheriff, at the request of a person delivering a warrant of execution, must give to that person a receipt for that warrant stating the day of its delivery.

No. 6387
s. 193.

118. *Duties on receipt of debt to Crown*

- (1) If the sheriff or any person employed in collecting, by process from any court, any debt to the Crown, receives from any person a sum as being due to the Crown, the sheriff or other person must give a receipt to that person for that sum and the sheriff must forthwith take all necessary steps
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to procure in respect of that sum the effectual discharge of the debtor.

- (2) A person receiving a sum referred to in sub-section (1) must account for it to the sheriff and the sheriff must give a receipt for that sum.
- (3) If there is a default under this section, the sheriff and his or her representatives are liable to pay any damage suffered by a debtor in consequence of the default.

119. Duties on arrest of civil debtors

No. 6387
s. 194.

- (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 sub-section (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.

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- (3) On the arrest of a person under the provisions referred to in sub-section (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 **Community Services Act 1970** or the **Corrections Act 1986**.

S. 119(4) def. of "prison" amended by No. 16/1987 ss 4(3)(Sch. 1 item 21), 12(Sch. 2 item 11).

No. 6387 s. 195.

120. *Liability for wrongful imprisonment*

- (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.

121. *Powers of sheriff*

- (1) A person must not resist the sheriff in the execution of a warrant or other process.

Penalty: 25 penalty units or 6 months imprisonment or both.

No. 6387 s. 196.

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- (2) If the sheriff finds any resistance in the execution of a warrant or other process, the sheriff must take with him or her such assistants as he or she thinks desirable and must go in person to do execution and may arrest the resisters and bring them before a justice to be dealt with according to law.
- (3) Proceedings for an offence under sub-section (1) may be brought in the Magistrates' Court.

S. 121(3)
amended by
No. 57/1989
s. 3(Sch. item
192.2).

No. 6387
s. 197.

122. *Fees*

The sheriff or any court official concerned in the execution of any process directed to the sheriff may demand, take and receive the fees fixed by the regulations.

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 sub-section (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 sub-section (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.

124. Offence to assault an officer or rescue goods

No. 6387
s. 199.

- (1) A person must not—
 - (a) assault a sheriff, bailiff or other officer while in the execution of his or her duty; or
 - (b) rescue or attempt to rescue any goods levied under process of the Court.

Penalty: 25 penalty units or 6 months imprisonment or both.

- (2) Proceedings for an offence under sub-section (1) may be brought in the Magistrates' Court.
- (3) Nothing in this section affects the powers of the Court in relation to contempt.

S. 124(2)
amended by
No. 57/1989
s. 3(Sch. item
192.3).

Division 4—GeneralNo. 6387
s. 201.**125. Extortion by and impersonation of court officials**

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

No. 6387
s. 202.**126. Offence to fail to assist sheriff**

- (1) A person who, having reasonable notice that he or she is required to assist the sheriff in arresting any person or in preserving the peace, omits without reasonable excuse to do so, is liable to a penalty of not more than 5 penalty units.
- (2) If the person referred to in sub-section (1) is a bailiff or assistant of the sheriff or a member of the police force that person is guilty of an offence and liable to a fine of not more than 5 penalty units or to imprisonment for a term of not more than one year or to both.
- (3) Proceedings for an offence under sub-section (1) may be brought in the Magistrates' Court.

S. 126(3)
amended by
No. 57/1989
s. 3(Sch. item
192.4).

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

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

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.

128. Money held under Act may be invested

No. 6387
s. 203A.

(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—

(d) on deposit with the State Bank of Victoria;

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

(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 sub-section (1) must be paid into the Consolidated Fund.

129. Regulations

No. 6387
s. 205.

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

- (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 the sheriff or 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.

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

- (2) A power conferred by sub-section (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.

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

- (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
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Supreme Court Act 1986

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s. 129

liable to pay a fee prescribed under sub-section (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.

**PART 8—REPEALS, AMENDMENTS, SAVINGS AND
TRANSITIONALS**

No. 6203.

130. *New section 41 substituted in the Audit Act 1958*

For section 41 of the **Audit Act 1958**,
substitute—

**"41. *No sum to be allowed without voucher
unless by order of the Supreme Court***

- (1) Subject to this Act, no sum is to be allowed in the account of any paymaster without a written voucher for the actual payment of the sum so claimed to be allowed, even if it is alleged that the papers have been lost or destroyed, except in accordance with an order of the Supreme Court made on the application of the paymaster.
- (2) The paymaster must give notice of the application to the Auditor-General and the Attorney-General and to such other persons as the Supreme Court directs.
- (3) The Court must order that the sum be allowed or disallowed, as the case requires, and the order is binding on Her Majesty and all other persons."

No. 10167.

131. *Amendment of the Commercial Arbitration Act 1984*

After section 34(5) of the **Commercial
Arbitration Act 1984** insert—

- "(5A) Where in accordance with rules of court an offer of compromise has been made in relation to a claim to which an arbitration agreement applies, the arbitrator or umpire shall, in exercising the discretion as to costs conferred on the arbitrator or umpire by sub-

section (1), take into account both the fact that the offer was made and the terms of the offer."

132. Amendment of the Constitution Act 1975

No. 8750.

The **Constitution Act 1975** is amended as follows:

- (a) In section 75(2) **omit** "and the Prothonotary, the Registrar of Probates";
- (b) For section 75(4) **substitute**—

"(4) The Court shall be constituted by a Judge or Judges, except in the case of any proceeding for which provision is made by any Act or enactment or by rules of court for the Court to be constituted by a Master.";
- (c) In section 75(6) after "Listing Master" **insert** ", the Registrar of Criminal Appeals";
- (d) Section 85(2) is **repealed**;
- (e) For section 85(3) **substitute**—

"(3) The Court has and may exercise such jurisdiction (whether original or appellate) and such powers and authorities as it had immediately before the commencement of the **Supreme Court Act 1986**.";
- (f) In section 86 for "Any Judge of the Court" **substitute** "The Court constituted by a Judge";
- (g) In section 87(1) **omit** "and the Judges thereof";

(h) For section 87(2) **substitute**—

"(2) Despite anything in any Act or the Rules, any power, duty or act which might have been exercised or performed by the Court constituted by a Judge or by a Master may be exercised or performed by the Court constituted by any other Judge or Master (as the case requires) if the Court cannot for any reason be constituted by that first-mentioned Judge or Master."

No. 6246.

133. *New section 32A inserted in the Evidence Act 1958*

After section 32 of the **Evidence Act 1958**
insert—

"32A. *Documents relating solely to party's case*

The rule of law whereby in any civil proceedings a party to the proceedings cannot be compelled to produce any documents relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party is hereby abrogated."

No. 6279.

134. *Amendment of the Instruments Act 1958*

The **Instruments Act 1958** is amended as follows:

- (a) In section 3 (definition of "Action") for "action in the Supreme Court or" **substitute** "proceeding in the Supreme Court or action in the";
- (b) In section 4—
 - (i) for "action" **substitute** "proceeding";
 - (ii) **omit** "of summons" (wherever occurring);

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- (iii) in paragraph (a) for "a judge"
substitute "the Court";
- (iv) for "sign final judgment in the form
contained in the Third Schedule to this
Act" **substitute** "enter final judgment";
- (c) In section 5(1)—
- (i) for "the judge" (wherever occurring)
substitute "the Court";
- (ii) **omit** "Supreme" (where secondly
occurring);
- (d) In section 6—
- (i) **omit** "or a judge";
- (ii) for "action" **substitute** "proceeding";
- (iii) **omit** "or judge" (wherever occurring);
- (e) In section 7 **omit** "or a judge";
- (f) in section 9—
- (i) **omit** "of summons" (wherever
occurring);
- (ii) for "an action or actions" **substitute** "a
proceeding or proceedings";
- (g) in section 11—
- (i) for "action" (wherever occurring)
substitute "proceeding";
- (ii) **omit** "or a judge".
- (h) For the Second Schedule **substitute**:

"SECOND SCHEDULE

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been
brought against you by the plaintiff for the claim set
out in this writ.

*Supreme Court Act 1986**Act No. 110/1986*

IF YOU INTEND TO DEFEND the proceeding YOU MUST GIVE NOTICE of your intention by first obtaining the leave of the Court to file an appearance and then filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office in the Law Courts, William Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to obtain the leave of the Court to file an appearance within the proper time and to file an appearance within that time, the plaintiff may ENTER JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME FOR OBTAINING LEAVE TO FILE AN APPEARANCE AND FOR FILING AN APPEARANCE is as follows—

- (a) where you reside within 80 kilometres of the post office corner of Bourke and Elizabeth Streets Melbourne, within 16 days after service;
- (b) where you reside beyond that distance, within 21 days after service.

IF you pay the amount claimed, namely, \$ and \$ for legal costs to the plaintiff or his solicitor within the proper time stated above, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

APPLICATION FOR LEAVE TO DEFEND must be made within the proper time stated above to a Master of the Court, Law Courts, William Street, Melbourne. It is not necessary to give notice of the application to the plaintiff.

THE COURT MAY GIVE LEAVE TO DEFEND if you—

-
- (a) pay into court the amount claimed, namely,
\$; or
 - (b) file affidavits satisfactory to the Court which disclose—
 - (i) facts which disclose a defence; or
 - (ii) such facts as would make it incumbent on the holder to prove consideration; or
 - (iii) such other facts as the Court considers sufficient to support the application.

FILED [*e.g.* 15 June, 19].

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

INDORSEMENT OF CLAIM

The plaintiff claims \$ principal and interest [*or* \$ balance of principal and interest] due to the plaintiff as the payee [*indorsee or bearer*] of a bill of exchange [*promissory note or order for the payment of money*] of which the following is a copy:

[Here copy bill and all indorsements on it]

Complete as follows:

1. Place of trial—
(If no place of trial is specified, trial will be in Melbourne.)
2. Mode of trial—
(If trial before a Judge and jury is not specified, trial will be before a Judge sitting alone.)
3. *This writ was filed—
 - (a) by the plaintiff in person;
 - (b) for the plaintiff by [name or firm of solicitor], solicitor, of [business address of solicitor];
 - (c) for the plaintiff by [name or firm or solicitor], solicitor, of [business address of solicitor] as agent for [name or firm of

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principal solicitor], solicitor, of [business address of principal].

4. The address of the plaintiff is—
5. The address for service of the plaintiff is—
[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 4, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]
6. The address of the defendant is—
 *[Complete or strike out as appropriate.]".

(i) The Third Schedule is **repealed**.

No. 7651.

135. Amendment of the Juries Act 1967

The **Juries Act 1967** is amended as follows:

(a) For section 14(1) **substitute**—

"14.(1) A civil inquest in the Supreme Court is to be heard by a jury of six and a civil inquest in the County Court is to be heard by a jury of four.";

(b) In section 15—

- (i) in sub-section (1) **omit** "or twelve" and "or twelve jurors (as the case requires)";
- (ii) in sub-section (2) **omit** "or six" and "or six jurors (as the case requires)";

- (c) Section 16 is **repealed**;
- (d) In section 17 **omit** "or (when any party to the action so requires) six jurors".

136. New section 34 inserted in the Limitation of Actions Act 1958

No. 6295.

After section 33 of the **Limitation of Actions Act 1958** insert—

"34. Abrogation of rule in Weldon v. Neal (1887) 19 Q.B.D. 394

- (1) If a court would, but for the expiry of any relevant period of limitation after the day a proceeding in the court has commenced, allow a party to amend a document in the proceeding, the court must allow the amendment to be made if it is satisfied that no other party to the proceeding would by reason of the amendment be prejudiced in the conduct of that party's claim or defence in a way that could not be met by an adjournment, an award of costs or otherwise.
- (2) This section does not apply to an amendment in a proceeding commenced before 1 January 1987."

137. Amendment of the Legal Profession Practice Act 1958

No. 6291.

In section 10(1) of the **Legal Profession Practice Act 1958** for "Every" **substitute** "Subject to section 67 of the **Supreme Court Act 1986**, every".

* * * * *

No. 58/1986.
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.
- (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.

140. *Repeals and amendments*

No. 6387.

(1) The **Supreme Court Act 1958** is **repealed**.

(2) The Acts referred to in the Schedule are repealed or amended to the extent set out in the Schedule.

SCHEDULE

CONSEQUENTIAL REPEALS AND AMENDMENTS

S. 140(2)

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).

<i>Number of Act</i>	<i>Short Title</i>	<i>Extent of Amendment or Repeal</i>
8044	Aboriginal Lands Act 1970	Section 27— omit "or a Judge thereof" (wherever occurring); — omit "or Judge" (wherever occurring).
6191	Administration and Probate Act 1958	Section 9(2)— omit "Such proceedings may be by motion or otherwise in accordance with Rules of Court." Section 15—for "a judge of the Court in chambers for a summons" substitute "the Court for an order"; — omit "any judge of". Section 28(2)— omit "or judge" (wherever occurring). Section 30(2)—for "by notice of motion or summons served upon such person or upon any person claiming through him apply to the Court or to a judge thereof" substitute "apply to the Court". Section 30(3)— omit "or judge" (wherever occurring). Section 34(1)—for "a judge of the Court upon application in a summary way by summons in chambers" substitute "the Court upon application in accordance with the Rules of Court"; —for "the judge" (wherever occurring) substitute "the Court".

Section 34(2)—for "the judge"
substitute "the Court";
—for "he" **substitute** "it".

Section 35(1)—**omit** "or a judge
thereof".

Section 35(1)(b)—**omit** "or
judge" (wherever occurring);
—for "the judge" **substitute** "the
Court".

Section 57(3)—**omit** "or a
judge".

Section 68 is **repealed**.

Section 84(3)—**omit** "or a
judge".

Section 89 is **repealed**.

Section 90 (definition of
"Court")—**omit** "or a judge
thereof".

Section 92 is **repealed**.

For section 93 **substitute**—

**"93. Service of notice of
application**

Notice of an application
under section 91 must be
served on the personal
representative of the
deceased and on such other
persons as the Court
orders."

Section 99—**omit** "or judge"
(wherever occurring);
—**omit** "or a judge".

Section 100—**omit** "or a judge"
(wherever occurring).

Section 101(1)—**omit** "or a
judge" (wherever occurring).

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1978	<p>thereof".</p> <p>Section 4—omit "or Judge" (wherever occurring); —omit "or he" (wherever occurring).</p> <p>Section 5—omit "or Judge" (wherever occurring).</p> <p>Section 5(1)—for "a single Judge sitting in court or in chambers" substitute "the court constituted by a judge".</p> <p>Section 5(3)—omit "or him".</p> <p>Section 6—omit "or Judge"; —omit "or him".</p> <p>Section 7—omit "or Judge".</p> <p>Section 8(4)—omit "or a Judge thereof"; —omit "or Judge".</p> <p>Section 8(5)—omit "or Judge" (wherever occurring).</p> <p>Section 9—omit "or a Judge thereof"; —omit "or Judge".</p> <p>Section 14—omit "or Judge" (wherever occurring).</p>
7772	<p>Alcoholics and Drug-dependent Persons Act 1968</p> <p>Section 11(1)—for "a judge of the Supreme Court or" substitute "the Supreme Court, to a judge"; —for "judge or magistrate" (wherever occurring) substitute "court, judge or magistrate".</p> <p>Section 11(3)—for "judge or magistrate" (wherever occurring) substitute "court, judge or magistrate"; —for "his" substitute "a".</p> <p>Section 12(3)—for "judge or magistrate" (wherever occurring) substitute "court, judge or magistrate".</p> <p>Section 17(2)—for "judge or</p>

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		magistrate" substitute "court, judge or magistrate"; —for "him at any time whether in court or in chambers" substitute "it or him or her".
7117	Appeal Costs Act 1964	Section 13(2) is repealed .
6201	Architects Act 1958	Section 11(4)—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court". Section 11(5)—before "judge" insert "court or"; —before "he" insert "it or"; —before "his" (where first occurring) insert "its ordinary jurisdiction, or"; —before "his" (where secondly occurring) insert "its or". Section 12(2)—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court". Section 12(3)—before "judge" insert "court or"; —before "he" insert "it or"; —before "his" (where first occurring) insert "its ordinary jurisdiction, or"; —before "his" (where secondly occurring) insert "its or".
9713	Associations Incorporation Act 1981	Section 33(2)—for "by petition presented" substitute "made".
9720	Building Control Act 1981	Section 61(3)(a)— omit "or a judge thereof".
6853	Business Names Act 1962	Section 14(2)— omit "in the case of the Supreme Court by a Judge thereof in chambers".
6217	Cemeteries Act 1958	Section 8(2)—for "petition of" substitute "application by".
9161	Chiropractors and Osteopaths Act 1978	Section 15(1)—for "a Judge of the Supreme Court in Chambers" (wherever occurring) substitute "the Supreme Court".

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		Section 15(2)—before "judge" insert "court or"; —before "he" insert "it or"; —before "his" (wherever occurring) insert "its or".
6221	Coal Mines Act 1958	Section 18(3)— omit "or a judge thereof"; — omit "or judge".
10167	Commercial Arbitration Act 1984	Section 4(1)— omit the definition of "Supreme Court". Section 17(1)—for "a writ" substitute "an order"; —for "the writ" substitute "the order". Section 17(2)—for "any writ" substitute "any order". Section 34(5)—for "rules made under this Act" substitute "rules of court". Section 61 is repealed .
6224	The Constitution Act Amendment Act 1958	Section 260— omit "or a judge thereof"; — omit "or judge" (wherever occurring). Section 280(2)— omit "jurisdiction of the"; —for "exercised" substitute "constituted". Section 299 is repealed .
6226	Co-operative Housing Societies Act 1958	Section 59(9)— omit "or a judge thereof".
6230	County Court Act 1958	Section 40—for "a judge of such court" substitute "that court". Section 49— omit "or a judge thereof". Section 51(2)—for "a judge of the Supreme Court may, if he thinks fit," substitute "the Supreme Court may". Section 53—for "Supreme Court

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or any judge thereof" **substitute** "Supreme Court".

Section 72(1)—after "Full Court" (wherever occurring) **insert** "of the Supreme Court";

—for "a judge of the Supreme Court," **substitute** "the Supreme Court constituted by a judge,";

—for "such judge and a jury of twelve or" **substitute** "the Supreme Court so constituted and a jury of".

Section 72(2)—**omit** "of twelve or of six men (as the case may be)".

Section 72(3)—**omit** "of twelve men (unless the plaintiff has already given notice that he requires a jury of twelve) or that he requires a jury of six men (unless the plaintiff has already given notice that he requires a jury)".

Section 74(3)—for "a judge of the Supreme Court or of the county court" **substitute** "the Supreme Court or a judge of the County Court".

Section 75 is **repealed**.

Section 76—after "Full Court" (wherever occurring) **insert** "of the Supreme Court".

10091 **Credit Administration Act 1984**

Section 61(1)—for "a judge of the Supreme Court in chambers" **substitute** "the Supreme Court".

For section 61(3) **substitute**—
"(3) The decision of the Supreme Court on an appeal under this section is final and without appeal."

Section 61(4)—**omit** "or a judge

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6231 Crimes Act 1958

of the Supreme Court".

Section 61(5) is **repealed**.

Section 69(4) is **repealed**.

Section 353(5)—for "A Judge of the Supreme Court or" **substitute** "The Supreme Court or a judge";

—before "he" **insert** "it or".

Section 359(1)—**omit** "a judge of".

Section 359(1A)—**omit** "a judge of" (wherever occurring).

Section 359(3)—for "judge" **substitute** "Supreme Court".

Section 359(4)—for "A judge of the Supreme Court or" **substitute** "The Supreme Court or a judge".

Section 359(5)—before "judge" (wherever occurring) **insert** "court or";

—for "him" (where secondly occurring) **substitute** "the court or judge".

Section 359AA(3)(c)—for "heard by a judge alone" **substitute** "determined by the Court without a jury".

Section 359A(2)—for "A judge of the" **substitute** "The";

—for "he" **substitute** "it".

Section 361(1A)—for "a judge of the Supreme Court or" **substitute** "the Supreme Court or a judge";

—before "judge may" **insert** "court or".

Section 415(1)—for "judge of such Supreme Court or" **substitute** "Supreme Court or a judge of the";

—before "his" (where secondly occurring) **insert** "its or".

Section 415(1A)—for "a judge of the Supreme Court or" **substitute** "the Supreme Court or a judge";

—before "judge may" **insert** "court or";

—before "his" **insert** "its or".

Section 421(4)—before "judge" **insert** "court or";

—for "him" **substitute** "the court or judge";

—for "he" **substitute** "the court or judge".

Section 445—**omit** "A judge of".

Section 446—for "judge may in his" **substitute** "court may in its".

Section 447(1)—for "judge by whom" **substitute** "court by which".

Section 449—**omit** "a judge of";

—for "such judge or chairman aforesaid" **substitute** "that Court".

Section 450—for "judge aforesaid" **substitute** "Court";

—for "such judge" **substitute** "that Court".

Section 451—**omit** "or any judge thereof" (wherever occurring);

—**omit** "or him".

Section 452—**omit** "or any judge thereof" (wherever occurring);

—**omit** "or a judge thereof";

—**omit** "or him" (wherever occurring).

Section 453—for "judge" **substitute** "court".

Section 471—**omit** "or any judge thereof".

Section 579(5)—**omit** "a judge

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		of". Section 581(1)— omit "or any judge thereof". Section 582— omit "any judge of"; —for "the judge" substitute "the Supreme Court constituted by a judge". Section 583—for "of any judge of the Supreme Court" substitute "the Supreme Court constituted by a judge". Fourth Schedule— omit "To the Judges of the Supreme Court of Victoria or any one of them." Fifth Schedule—for "Given under our [<i>or my</i>] hand this day of . K.L. } Judges [<i>or Judge</i>] of the M.N. } Supreme Court" substitute "Dated this day of 19 . Judge of the Supreme Court." Section 26(2)—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court". Section 26(3)—for "judge" substitute "Supreme Court"; —for "he" substitute "it"; —for "his" (wherever occurring) substitute "its".
8287	Dentists Act 1972	Section 110(2)—for "a judge of the Supreme Court in Chambers" substitute "the Supreme Court".
9719	Drugs, Poisons and Controlled Substances Act 1981	Section 110(13) is repealed .
6246	Evidence Act 1958	Section 4— omit "or any judge thereof". Section 5— omit "or any judge thereof"; — omit "(the judge's order being made a rule of court before or at

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the time of the application for an attachment)".

Section 8—for "a judge of the Supreme Court or before the prothonotary thereof" **substitute** "the Supreme Court".

Section 12—**omit** "or a judge thereof";

—for "a judge of the Supreme Court" **substitute** "the Supreme Court".

For section 13 **substitute**—

"13. Either party to a proceeding pending in the Supreme Court or the County Court shall be at liberty to apply to the Court for an order for the inspection, by himself or by any of his witnesses, of any real or personal property the inspection of which may be material to the proper determination of the question in dispute; and the Court may make an order upon such terms as to costs and otherwise as the Court may direct."

Section 20(2)—**omit** "or a judge thereof";

—**omit** "or judge".

Section 20(3)—**omit** "or a judge thereof";

—**omit** "or judge (as the case may be)".

Section 20(4) is **repealed**.

Section 58A (definition of "Court")—

for "Supreme Court or a judge thereof" (wherever occurring) **substitute** "Supreme Court";

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		—in paragraph (d) omit "means".
		Section 130 (1)—for "Any judge of the Supreme Court if in his discretion he thinks fit may, and any other" substitute "Any";
		— omit "judge or other".
		Section 146—for "any single judge of the Supreme Court sitting in court or in chambers" substitute "the Supreme Court constituted by a Judge";
		—for "a judge of the Supreme Court who" substitute "the Supreme Court which";
		—for "he deems" substitute "it deems".
		Section 150— omit "or Judge" (wherever occurring).
6251	Firearms Act 1958	Section 37(1)—for "a Judge in chambers" substitute "the Supreme Court".
6263	Geelong Waterworks and Sewerage Act 1958	Section 43(1)—for "petition of" substitute "application by".
		Section 129(1)—for "petition of" substitute "application by".
6265	Goods Act 1958	Section 82(1)—for "A writ of fieri facias or warrant or other" substitute "A warrant or";
		—for "when the writ" substitute "when the warrant or writ";
		—for "such writ" (wherever occurring) substitute "such warrant or writ".
58/1986	Guardianship and Administration Board Act 1986	Section 65 is repealed .
6276	Imprisonment of Fraudulent Debtors Act 1958	Section 4— omit "any judge";
		—for "the judge" substitute "the court".
		Section 5—for "judge" (wherever occurring) substitute "court";

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		—for "whom" substitute "which";
		—for "he thinks fit" substitute "it thinks fit".
		Section 6—for "judge" substitute "court".
		Section 8— omit "under the hand of such judge";
		—for "judge" (wherever occurring) substitute "court".
		Section 9— omit "judge" and insert "court".
		Section 10— omit "any judge of";
		— omit "under his hand";
		—for "he" substitute "it".
		Second Schedule (Form I)—for "before a judge of the said court" substitute "before the said court";
		—for "the said judge" substitute "the said court".
		Second Schedule (Form II)—for "judge" substitute "court";
		—for "Given under my hand this day of Judge." substitute —"Dated this day of ".
		Second Schedule (Form III)—for "His Honour Mr. Justice did" substitute "the Supreme Court did".
		Second Schedule (Form IV)—for "His Honour Mr. Justice did" substitute "the Supreme Court did".
10063	Judgment Debt Recovery Act 1984	Section 19(4)(b)— omit "by a judge of".
6284	Land Act 1958	Section 366—for "upon a petition to be presented in a summary way" substitute "on application";

		—for "such petition" substitute "the application";
		—for "must be presented" substitute "must be made".
		Section 367—for "petition has been presented" substitute "application has been made".
		—for "petition so presented" substitute "application so made".
6285	Landlord and Tenant Act 1958	Section 27—for "writ of fieri facias or other writ" substitute "warrant".
		Section 97 is repealed .
6286	Lands Compensation Act 1958	Section 3 (definition of "Court")— omit "or a judge thereof".
		Section 39(d)— omit "or a judge thereof as is hereinafter provided in a summary way".
		Section 42— omit "by summons";
		— omit "or a judge thereof";
		— omit "in a summary way";
		— omit "or judge" (wherever occurring).
		Section 43— omit "or judge" (wherever occurring).
6290	Latrobe Valley Act 1958	Section 65(7)—for "by summons apply to the Supreme Court or a Judge thereof" substitute "apply to the Supreme Court".
6291	Legal Profession Practice Act 1958	Section 12(2)—for "a judge of the Supreme Court in chambers," substitute "the Supreme Court,".
		Section 32A(1)—for the expression commencing "a judge" and ending "of the appeal." substitute "the Supreme Court.".
		Section 32A (3)—for "judge"

(wherever occurring) **substitute** "Court";

—for "his" (wherever occurring) **substitute** "its".

Section 64A(2)—**omit** "in the prescribed form".

Section 64A(5)—**omit** "and may be heard in court or in chambers".

Section 66(2)—for "a judge of the Court in chambers"

substitute "the Court";

—for "the judge" **substitute** "the Court";

—for "he" **substitute** "it".

Section 67(2) is **repealed**.

Section 87(1)(a)—**omit** "in the prescribed form".

Section 87(3)—**omit** "and may be heard in court or in chambers".

For section 90(8) **substitute**—

"(8) An order or an application pursuant to sub-section (7) may be made without notice to any person."

Section 103A(1)—**omit** "or a judge thereof" (wherever occurring).

For section 103A (2)

substitute—

"(2) An order under sub-section (1) may be made without notice to any person."

Section 104A (definition of "Court")—

omit "or a judge thereof".

Section 104C(1)—**omit** "in chambers".

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6292	Libraries Act 1958	Section 19—for "on petition" substitute "on application".
7695	Liquor Control Act 1968	Section 9— omit "or a Judge thereof". Section 16(1)— omit "or any judge thereof". Section 16(2)— omit "or Judge thereof". Section 17(2)—for "A Judge of the" substitute "The". Section 19— omit "by writ of certiorari or otherwise". Section 151(1) is repealed .
6299	Local Government Act 1958	Section 157A(3) is repealed . Section 354(1)— omit "of fieri facias" (where first occurring); —for "fieri facias" (where secondly occurring) substitute "execution issued out of the Supreme Court". Section 354(3)—for "fieri facias issued upon any such judgment or order" substitute "execution issued out of the Supreme Court". Section 433(1)—for "petition" substitute "application". Section 447(1)—for "petition of" substitute "application by". Division 3 of Part XLVII is repealed .
7429	Lotteries Gaming and Betting Act 1966	Section 3 (definition of "Supreme Court")— omit "or any judge thereof in court or in chambers".
8184	Magistrates' Courts Act 1971	Section 77(1)— omit "of a Judge of". Section 83(1)— omit "of a judge". Section 83(2)—for "a single

judge sitting in court or in chambers" **substitute** "the Supreme Court constituted by a judge".

Section 85(2)—for "a single judge sitting in court or in chambers" **substitute** "the Court constituted by a judge".

Section 88(1)—for "a judge of the Supreme Court sitting in court or chambers" **substitute** "the Supreme Court";

—for "a judge of the Supreme Court sitting in court or in chambers" **substitute** "the Supreme Court";

—for "the judge" **substitute** "the Supreme Court".

Section 88(2)—for "before a single judge sitting in court or in chambers" **substitute** "constituted by a judge".

Section 88(3)—before "a single judge" (wherever occurring) **insert** "the Supreme Court constituted by".

Section 88(5)—**omit** "or a judge thereof".

Section 89—for "a judge whether sitting in court or chambers" **substitute** "the Supreme Court constituted by a judge";

—**omit** ", which shall have all the powers of the judge".

Section 90—for "the judge" **substitute** "the Supreme Court";

—**omit** "any judge of".

Section 91—for "the Court or judge" **substitute** "the Supreme Court";

—**omit** "or he".

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Section 92—for "judge"
substitute "Supreme Court";
—for "he" **substitute** "it".

Section 93—for "the Court or
judge" (wherever occurring)
substitute "the Supreme Court";
—in paragraph (d) before
"Court" **insert** "Magistrates' ";
—for "Court possesses"
substitute "Supreme Court
possesses";
—for "Court possessed"
substitute "Supreme Court
possessed".

Section 94—for "Court or judge"
substitute "Supreme Court";
—**omit** "or he".

Section 96(1)—for "a judge of
the Supreme Court sitting in
court or in chambers" **substitute**
"the Supreme Court".

Section 97—for "certiorari or
any other writ or" **substitute**
"any".

Section 98—for "Court or judge"
(wherever occurring) **substitute**
"Supreme Court";
—**omit** "or he".

Section 99—for "Court or judge"
(wherever occurring) **substitute**
"Supreme Court";
—**omit** "or he".

Section 100(1)—before "Court
an" **insert** "Supreme".

Section 100(2)—for "Court or
judge" **substitute** "Supreme
Court".

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		Section 101—for "Court or judge" substitute "Supreme Court".
6302	Marine Act 1958	Section 183(1)—for the expression commencing "opinion of a Judge" and ending "their decision" substitute "opinion of the Supreme Court constituted by a judge, and the Court of Marine Inquiry shall give its decision". Section 183(2)—for "a single Judge of the Supreme Court" substitute "the Supreme Court constituted by a judge"; —for "Judge" (where secondly occurring) substitute "Court"; —for "he" substitute "it". Section 183(3)—for "said Judge" substitute "Supreme Court"; — omit "he or".
9196	Market Court Act 1978	Section 26(8) is repealed .
6306	Marriage Act 1958	For section 3(1) substitute — '(1) In this Act, "the Court" means the Supreme Court.' Section 132(1)— omit the expression commencing "(1) In this Part" and ending "or a judge thereof"; —for "And in" substitute "(1) In". Section 154 is repealed . Section 155(1) is repealed . Section 159(3)— omit "or a judge thereof"; — omit "or judge" (wherever occurring); — omit "or his". Section 161(1)—for the expression commencing "by summons" and ending at the end

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8061 **Medical Practitioners Act
1970**

of the sub-section **substitute** "to the Supreme Court or (at the option of the applicant irrespective of the value of the property in dispute) to the County Court".

Section 161(2)—for "any Judge of the Supreme Court or" **substitute** "the Supreme Court or any judge".

Section 161(3)—before "Judge" **insert** "Court or";

—before "he" (wherever occurring) **insert** "it or".

Section 161(4)—before "Judge" (wherever occurring) **insert** "Court or";

—before "him" **insert** "it or";

—before "he" **insert** "it or".

Section 161(5)—before "Judge" (wherever occurring) **insert** "Court or";

—before "his" **insert** "its or".

Section 161(6)—before "Judge" **insert** "Court or".

Section 161(7)—before "Judge" **insert** "Court or".

Section 161(8A)—before "a judge" **insert** "the Court or";

—before "the judge" **insert** "Court or".

Section 161(10)—before "Judge" **insert** "Court or".

Section 11(2B)—**omit** "or a Judge thereof".

Section 11(3A)—for "a judge" **substitute** "the Supreme Court";

—for "he" **substitute** "it";

—for "the judge" substitute "the Supreme Court";

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6310	Melbourne and Metropolitan Board of Works Act 1958	<p>—for "his" substitute "its".</p> <p>Section 11(3B)(e)—for "on the return of any prerogative writ" substitute "in proceedings in the nature of proceedings for a prerogative writ".</p> <p>Section 58—omit "or any judge thereof".</p> <p>Section 59—omit "or any judge thereof";</p> <p>—omit "or judge" (wherever occurring).</p> <p>Section 184AB—for "by summons apply to the Supreme Court or a Judge thereof" substitute "apply to the Supreme Court".</p>
8993	Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977	<p>Section 195—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court constituted by a judge";</p> <p>—for "such judge" (wherever occurring) substitute "the Supreme Court";</p> <p>—for "he" substitute "it".</p> <p>Section 197—omit "or any judge thereof" (wherever occurring).</p> <p>Section 198—omit "or any judge thereof";</p> <p>—omit the expression commencing "Subject to the Supreme" and ending "as such receivers.";</p> <p>—omit "or a judge thereof".</p> <p>Section 324—omit "or a Judge thereof".</p> <p>Section 24—omit "or a judge thereof" (wherever occurring);</p> <p>—omit "or any judge thereof"</p>

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		(wherever occurring).
		Section 24(8) is repealed .
		Schedule 1 Part I (item 7)—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court";
		—for "such judge" (wherever occurring) substitute "the Supreme Court";
		—for "he" substitute "it".
		Schedule 1 Part II (item 8(1))— omit "a judge of" (wherever occurring);
		—for "such judge" substitute "the Supreme Court";
		—for "I do order" substitute "it is ordered".
		Schedule 1 Part II (item 8(3))—for "judge's" substitute "court";
		— omit "a judge of".
		Schedule 1 Part II (item 8(4)(a)— omit "any judge of".
		Schedule 1 Part II (item 8(a)(b))—for "Such judge" substitute "The Supreme Court".
59/1986	Mental Health Act 1986	Section 64— omit "a Judge of" (wherever occurring).
		Section 68— omit "a Judge of" (wherever occurring);
		—for "the Judge" substitute "the Court" (wherever occurring);
		— omit "the Judge of".
		Section 119 is repealed .
6316	Mildura Irrigation Trusts and Sunraysia Water Board Act 1958	Section 134—for "petition" substitute "application".
		Section 152(1)— omit "a Judge of" (wherever occurring);
		—for "a judge of that court without a jury" substitute "that

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		court". For section 152(2) substitute — "(2) The decision of the Supreme Court is final and conclusive." Section 154(1)— omit "a Judge of"; — omit "said Judge of the". Section 155— omit "Judge of"; —for "judge" substitute "court". Section 156— omit "any Judge of"; — omit "without action and either by summons or by motion"; —for "judge" substitute "court".
6320	Mines Act 1958	Section 187— omit "or any judge thereof". Section 262— omit "in a summary way on affidavit".
6330	Partnership Act 1958	Section 27(2)— omit "or a judge thereof".
7750	Perpetuities and Accumulations Act 1968	Section 2(1) (definition of "Court")— omit "or a Judge thereof".
8593	Pharmacists Act 1974	Section 18(4)—for "a Judge of the Supreme Court in chambers" substitute "the Supreme Court". Section 18(5)—for "Judge" substitute "Supreme Court"; —for "he" substitute "it"; — omit "his" (where first occurring); —for "his" (where secondly occurring) substitute "its". Section 18(9)—for "Judge" substitute "Supreme Court".
9147	Physiotherapists Act 1978	Section 19(1)—for "a judge of the Supreme Court in Chambers"

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		<p>substitute "the Supreme Court";</p> <p>—for "as a judge of the Supreme Court in Chambers" substitute "as the Supreme Court".</p> <p>Section 19(2)—before "judge" insert "court or";</p> <p>—before "he" insert "it or";</p> <p>—before "his" (wherever occurring) insert "its or".</p>
6262	Port of Geelong Authority Act 1958	<p>Section 90(8)—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court";</p> <p>—for "such judge" (wherever occurring) substitute "the Supreme Court";</p> <p>—for "he" substitute "it".</p>
6312	Port of Melbourne Authority Act 1958	<p>Section 124—for "petition of" substitute "application by".</p>
6340	Port of Portland Authority Act 1958	<p>Third Schedule Part I (item 7)—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court";</p> <p>—for "such judge" (wherever occurring) substitute "the Supreme Court";</p> <p>—for "he" substitute "it".</p> <p>Third Schedule Part II (item 8)—omit "a judge of" (wherever occurring);</p> <p>—for "such judge" (wherever occurring) substitute "the Supreme Court";</p> <p>—for "I do order" substitute "the court orders";</p> <p>—for "judge's order" substitute "court order";</p> <p>—omit "any judge of".</p>
6890	Probate Duty Act 1962	<p>Section 13(1)—for "a judge of the Court in chambers" substitute "the Court".</p>

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6344 **Property Law Act 1958**

Section 13(2)—**omit** "any judge of".

Section 7(5) for "a judge of the Court in Chambers" **substitute** "the Court";

—for "such judge" (wherever occurring) **substitute** "the Court";

—for "a judge" **substitute** "the Court".

Section 49(1)—**omit** "in a summary way".

Section 137—**omit** "in a summary way";

—for "judge" **substitute** "court";

—for "judge" **substitute** "court";

—for "him" **substitute** "it".

Section 146(2)—for "may, in the lessor's action (if any) or in any action brought by himself, or upon summons" **substitute** "may";

—**omit** "or a judge thereof";

—**omit** "or judge" (wherever occurring).

Section 146(3)—**omit** "or a judge".

Section 146(4)—**omit** "or judge" (wherever occurring);

—**omit** "either in the lessor's action (if any) or in any action brought by such person for that purpose or upon summons".

Section 203 is **repealed**.

Section 204 is **repealed**.

Section 208(2)—for "any writ or other like process" **substitute** "any process of execution".

Section 208(3)—for "execution of a writ of fieri facias or other

like process" **substitute**
"execution of any process of
execution";
—for "any writ of execution"
substitute "any process of
execution".
Section 208(4)—for "a writ of
feri facias or other like"
substitute "any";
—**omit** "writ or";
—for "a writ of fieri facias"
(where secondly occurring)
substitute "any process";

—after "sheriff under a writ of
feri facias addressed to him"
insert "before the
commencement of the **Supreme
Court Act 1986**".

Section 209—for "writ of
execution or other like process"
(wherever occurring) **substitute**
"process of execution";

—**omit** "writ of fieri facias or
other like".

Section 219—after "writ of fieri
facias" **insert** ", warrant of
seizure and sale or other like
process";

—for "such writ of fieri facias"
(wherever occurring) **substitute**
"such process".

—for "such writ" (wherever
occurring) **substitute** "such
process".

Section 227(2)—for "petition"
substitute "application".

Section 228(1)—for "Judge in
Chambers" **substitute** "Court".

Section 254—**omit** "the Master
of".

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		Section 274(4)— omit "a judge of"; —for "the judge" substitute "it".
7355	Psychological Practices Act 1965	Section 23(2)—for "a Judge of the Supreme Court in chambers" substitute "the Supreme Court". Section 23(3) is repealed . For section 23(4) substitute — "(4) The decision of the Supreme Court on an appeal under this section is final." Section 24—for "Judge" substitute "Supreme Court".
6357	Religious Successory and Charitable Trusts Act 1958	Section 45— omit "a judge of"; —for "judge making the order" substitute "Supreme Court"; — omit the expression commencing "All applications" and ending "the applicant". Section 61—for "present a petition to the Supreme Court stating such complaint and praying such relief" substitute "with the consent of a law officer apply to the Supreme Court for such relief"; —for "such petition" substitute "the application". Section 62 is repealed . Section 63— omit "or a judge thereof" (wherever occurring).
6975	Sale of Land Act 1962	Section 21(1)— omit "a Judge of"; —for "his" substitute "its".
6367	Settled Land Act 1958	Section 3(1) (definition of "Court")— omit "or a judge thereof". Section 113— omit sub-sections (2), (3), (4) and (5).
6368	Sewerage Districts Act 1958	Section 65(1)—for "petition of"

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		<p>substitute "application by".</p> <p>Section 68(8)—for "a judge of the Supreme Court in Chambers" substitute "the Supreme Court";</p> <p>—for "such judge" (wherever occurring) substitute "the Supreme Court";</p> <p>—for "he" substitute "it".</p>
6375	Stamps Act 1958	<p>Second Schedule—omit "Supreme Court Act 1958" and insert "Supreme Court Act 1986".</p>
6379	State Bank Act 1958	<p>Section 57—for "or any judge thereof, who" substitute "which";</p> <p>—omit "or judge";</p> <p>—omit "or his".</p>
6377	State Electricity Commission Act 1958	<p>Section 93—omit "or any judge thereof" (wherever occurring);</p> <p>—omit "or a judge thereof" (wherever occurring).</p> <p>Section 93(8) is repealed.</p> <p>Fifth Schedule Part II (item 8)—omit "a judge of" (where twice occurring);</p> <p>—for "such judge" substitute "the Court";</p> <p>—for "I do order" substitute "the Court orders".</p>
63/1986	Supreme Court (Rules of Procedure) Act 1986	The whole Act is repealed .
6392	Temperance Halls Act 1958	Section 7—for "petition of" substitute "application by".
6849	Town and Country Planning Act 1961	<p>Section 49(2)—omit "by summons";</p> <p>—omit "or a Judge thereof".</p> <p>Section 49O is repealed.</p>
6399	Transfer of Land Act 1958	Section 4(1) (definition of "Court")— omit "of the State of

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		Victoria or a Judge thereof"; —(definition of "Sheriff")—for "writ of fieri facias" substitute "process of execution". Section 52(2)—for "writ of fieri facias or judgment decree or order" substitute "judgment, decree, order or process of execution".
		Section 52(3)—for "writ judgment decree or order" (wherever occurring) substitute "judgment decree order or process". Section 52(4)—for "writ judgment decree or order" substitute "judgment, decree, order or process". Section 52(5)—for "writ judgment decree or order" (wherever occurring) substitute "judgment decree order or process". Section 52(6)—for "writ judgment decree or order" (wherever occurring) substitute "judgment decree order or process".
6401	Trustee Act 1958	Section 3(1) (definition of "Court")— omit "or a judge thereof".
10168	Trustee Companies Act 1984	Section 21(3)— omit "or a judge of the Supreme Court"; — omit "or judge". Section 22(1)—for "a judge of the Supreme Court or, subject to the Rules of the Supreme Court, to a master of the Supreme Court," substitute "the Supreme Court".

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		Section 22(2)—for "judge or master" (wherever occurring) substitute "Supreme Court".
		Section 27— omit "or to a judge of the Supreme Court"; — omit "or judge" (wherever occurring).
		Section 28— omit "or for a judge of the Supreme Court"; — omit "or a judge of the Supreme Court".
		Section 29— omit "or of a judge of the Supreme Court"; — omit "or to a judge of the Supreme Court"; — omit "or judge" (wherever occurring).
		Section 44(2)— omit "a judge of"; —for "the judge" substitute "the Supreme Court".
		Section 54— omit "or of a judge of the Supreme Court"; — omit "or judge".
6403	Unauthorized Documents Act 1958	Section 4(2)— omit "or a judge thereof in chambers".
6653	Valuation of Land Act 1960	Section 13C(4)— omit "a Judge of". For section 13C(5) substitute — "(5) Any such appeal shall be by way of rehearing and the decision of the Supreme Court on such an appeal is final and without appeal." Section 14(1) (definition of "Court")— omit "or a judge thereof". Section 14(1)— omit the definition of "Judge".

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		Section 45(2) is repealed .
6408	Venereal Diseases Act 1958	Section 15(5)— omit "a judge of the Supreme Court or".
6413	Water Act 1958	Section 298(1)—for "petition of" substitute "application by". Section 300(8)—for "a judge of the Supreme Court in chambers" substitute "the Supreme Court"; —for "such judge" (wherever occurring) substitute "the Supreme Court"; —for "he" substitute "it".
7698	West Moorabool Water Board Act 1968	Section 37(1)—for "petition of" substitute "application by". Section 39(8)—for "a Judge of the Supreme Court in Chambers" substitute "the Supreme Court"; —for "such judge" (wherever occurring) substitute "the Supreme Court"; —for "he" substitute "it".
6417	Wire Netting Act 1958	Section 14(5)—for "writ of fieri facias or other writ or process of execution" substitute "process of execution".

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NOTES

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: s. 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**

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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**

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**

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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**

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**

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**

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

Assent Date: 2.6.98

Commencement Date: S. 311(Sch. 1 item 88) on 1.7.98:

Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

3. Explanatory Detail

¹ S. 3(1) def. of "Chief Justice": Sections 29(1)(2), 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 "Master": See note 1.

⁶ S. 3(1) def. of "President": See note 1.

⁷ S. 3(1) def. of "Trial Division": See note 1.

⁸ Ss 8, 9 (*repealed*): See note 1.

⁹ Pt 2 Div. 2: See note 1.

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¹⁰ Pt 2 Div. 2A: See note 1.

¹¹ S. 19(e): See clause 1(d) of the Schedule to the **Crimes (Sexual Offences) Act 1991**, No. 8/1991 which reads as follows:

Section 21

SCHEDULE

TRANSITIONAL PROVISIONS

1. The amendments made by the following provisions apply to a proceeding that occurs on or after the commencement of the provision, irrespective of when the offence to which the proceeding relates is alleged to have been committed—
 - (a) section 3 to the extent that it—
 - (i) abolishes the requirement of corroboration in sections 51(5), 54(2) and 55(2) of the **Crimes Act 1958** by repealing those sections;
 - (ii) inserts a new section 61 in the **Crimes Act 1958**;
 - (b) section 6(c);
 - (c) any provision of Part 3;
 - (d) any provision of section 13, 15, 16(1), (a), (b), (c), (d) or (e) or 19.
- 2.(1) Subject to clause 1(a), the amendments made by section 3, 6(a), 6(b), 6(d) or 6(e) apply only to offences alleged to have been committed after the commencement of that section.
- (2) The amendment made by any provision of section 4, 5, 14, 16(1)(f) or 16(2) apply only to proceedings relating to offences alleged to have been committed after the commencement of the provision.
- (3) For the purposes of this clause an offence is not alleged to have been committed after the commencement of a provision if it is alleged to have been committed between two dates, one before and one after that commencement.

Schedule clauses 1(d), 2(2) amended by No. 8/1991 section 8(a)(b).

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¹² S. 20A: See note 1.

¹³ 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*

The amendment made by section 43 to the **Supreme Court Act 1986** applies only to proceedings commenced after the commencement of that section.

¹⁴ S. 25: See note 1.

¹⁵ 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 sub-section (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.

¹⁶ S. 25(1)(ec): See note 15.

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¹⁷ 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.

¹⁸ S. 104: See note 1.

¹⁹ S. 105: See note 1.

²⁰ S. 111A: See note 1.

²¹ S. 112: See note 1.