

**Version No. 061**  
**Supreme Court Act 1986**

**No. 110 of 1986**

Version incorporating amendments as at 23 April 2007

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**Version No. 061**  
**Supreme Court Act 1986**  
**No. 110 of 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—

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

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

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

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



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

"**Chief Justice**" includes "**Acting Chief Justice**", and in the absence of the Chief Justice and the Acting Chief Justice means the senior Judge of the Court for the time being present<sup>1</sup>;

"**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).

"**Court of Appeal**" means the division of the Court called the Court of Appeal<sup>2</sup>;

S. 3(1) def. of  
"court official"  
amended by  
Nos 35/1996  
s. 453(Sch. 1  
item 80.1(b)),  
102/1997  
s. 49(Sch.  
item 5),  
18/2005  
s. 18(Sch. 1  
item 103.1(b)).

"**court official**" means—

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

"**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repealed by  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).<sup>3</sup>

\* \* \* \* \*

**"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**<sup>4</sup>;

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)).

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

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

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

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

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

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

\* \* \* \* \*

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;

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

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

**"President"** means the President of the Court of Appeal<sup>6</sup>;

**"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**;

S. 3(1) def. of "superannuation contributions surcharge" inserted by No. 19/2001 s. 19.

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

S. 3(1) def. of "superannuation contributions surcharge notice" inserted by No. 19/2001 s. 19.

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

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

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

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

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

**"Trial Division"** means the division of the Court called the Trial Division<sup>7</sup>;

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

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

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

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

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

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

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

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**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.

Ss 8, 9  
repealed by  
No. 109/1994  
s. 19.<sup>8</sup>

\* \* \* \* \*

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.

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**Division 2—Court of Appeal<sup>9</sup>**

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

**10. Jurisdiction and powers**

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

- (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**

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

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

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

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

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

- (1) Subject to this Act and the Rules, any 3 or more Judges of Appeal constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.
- (1A) If the President of the Court of Appeal so determines in a particular case, 2 Judges of Appeal constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.
- (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.
- (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.

- (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.

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

**12. Opinions equally divided**

No. 6387  
ss 36(3), 38.

- (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.

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

- (2) If an appeal or other matter has been heard by the Court of Appeal constituted by more than 2 Judges of Appeal and the Judges are equally divided in opinion, the judgment of the Court must be given in accordance with the opinion of the senior Judge of Appeal then present.

**13. Judges not to sit on appeal from their own judgments**

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

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

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

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

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

No. 6387  
ss 39, 40.  
S. 14  
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 37, 44.  
S. 15  
substituted by  
No. 109/1994  
s. 20.

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

- (1) If—
  - (a) after the Court of Appeal (including the Court constituted under this section) has started the hearing, or further hearing, of a proceeding; and
  - (b) before the proceeding has been determined—  
one of the Judges of Appeal constituting the Court of Appeal dies, resigns as a Judge or otherwise becomes unable to continue as a member of the Court for the purposes of the proceeding, the hearing and determination of the proceeding may be finished by the remaining Judges constituting the Court if at least 2 Judges remain and the parties consent.
- (2) The Court of Appeal constituted under this section may have regard to any evidence given or received, and arguments adduced, by or before the Court of Appeal as previously constituted.

- (3) Any question in the proceeding is to be decided in the same way, and the judgment of the Court of Appeal constituted under this section has the same force and effect, as if the Court were not constituted under this section.

**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.

No. 6387 s. 46.  
S. 16  
substituted by  
No. 109/1994  
s. 20.

**Division 2A—Trial Division<sup>10</sup>**

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

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

- (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.

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

**17A. Restriction on appeals**

- (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—

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

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.

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

- (a) under section 148(1)(b) of the **Victorian Civil and Administrative Tribunal Act 1998**; or
- (b) under section 92 or 109 of the **Magistrates' Court Act 1989**—

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

(3B) Sub-section (3A) applies only to an order made on an appeal instituted after the commencement of section 10 of the **Courts and Tribunals Legislation (Further Amendment) Act 2000**.

S. 17A(3A)  
inserted by  
No. 51/2000  
s. 10.

S. 17A(3B)  
inserted by  
No. 51/2000  
s. 10.

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- (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 Act or the Corporations Law or the **Companies (Victoria) Code** in respect of misfeasance or otherwise;
    - (iv) a decision dismissing a proceeding for want of prosecution;
    - (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.

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

- (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.

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

**17B. Reference of matters to Court of Appeal**

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

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**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



s. 20

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

- (c) endanger the physical safety of any person;  
or
- (d) offend public decency or morality; or

S. 19(e)  
inserted by  
No. 8/1991  
s. 19(1),  
amended by  
No. 10/1999  
s. 25.

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

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

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

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.

**20A. Power to act in cases relating to rates and taxes<sup>12</sup>**

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

- (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.

**21. Vexatious litigants**

No. 6387 s. 33.

- (1) The Attorney-General may apply to the Court for an order declaring a person to be a vexatious litigant.
- (2) The Court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied that the person has—
  - (a) habitually; and
  - (b) persistently; and
  - (c) without any reasonable ground—  
instituted vexatious legal proceedings (whether civil or criminal) in the Court, an inferior court or a tribunal against the same person or different persons.

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

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

s. 21

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

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

- (a) the Court; or
- (b) an inferior court; or
- (c) a tribunal constituted or presided over by a person who is an Australian lawyer—

**S. 21(3)(c)**  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 103.2).

do the following—

**S. 21(3)(d)**  
amended by  
No. 71/2003  
s. 3(1).

(d) continue any legal proceedings (whether civil or criminal) in the Court, inferior court or tribunal; or

**S. 21(3)(e)**  
amended by  
No. 71/2003  
s. 3(1).

(e) commence any legal proceedings (whether civil or criminal) in the Court or any specified inferior court or tribunal; or

**S. 21(3)(f)**  
amended by  
No. 71/2003  
s. 3(1).

(f) commence any specified type of legal proceedings (whether civil or criminal) in the Court or any specified inferior court or tribunal.

**S. 21(4)**  
substituted by  
No. 64/1996  
s. 42(2).

(4) Leave must not be given unless the Court, or if the order under 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(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.

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- (8) The Court may, in determining whether to make an order under sub-section (2), take into account vexatious legal proceedings (whether civil or criminal) instituted before or after the commencement of the **Supreme Court (Vexatious Litigants) Act 2003**.

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

## 22. Execution of instruments by order of Court

No. 6387 s. 30.

- (1) If a person fails or refuses to comply with a judgment directing that person to execute a document or indorse a negotiable instrument, the Court may, on such terms and conditions as it considers just, order that the document be executed or that the instrument be indorsed by a person nominated by the Court.
- (2) A document or instrument executed and indorsed under 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.

## 23. Attachment of earnings

No. 6387  
s. 24A.

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

No. 6387 s. 32.

## 24. Costs to be in the discretion of Court

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

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

### 24A. Mediation<sup>13</sup>

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

No. 6387 s. 25.

## 25. Power to make Rules<sup>14</sup>

- (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;
  - (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)  
amended by  
No. 9/1995  
s. 7(5).

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

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- (ca) applications and appeals to and proceedings in the Court of Appeal; S. 25(1)(ca) inserted by No. 109/1994 s. 22(1)(b).
- (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;
- (ea) The reference of any proceeding or of any part of a proceeding to mediation or arbitration; S. 25(1)(ea) inserted by No. 64/1990 s. 7(1).
- (eb) requirements for the purposes of Part IIA of the **Evidence Act 1958** for or with respect to<sup>15</sup>— S 25(1)(eb) inserted by No. 4/1997 s. 5.
- (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;
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S. 25(1)(ec)  
inserted by  
No. 4/1997  
s. 5.

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

No. 6387 s. 26.  
S. 26  
amended by  
No. 9/1995  
s. 7(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. 27.

## 27. Disallowance of Rules

The Rules are subject to disallowance by the Parliament.

**27A. Protection of special referees, mediators and arbitrators**

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

- (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**.

**Division 5—Council of Judges**

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

**28. Council of Judges**

No. 6387 s. 28.

- (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  
No. 110 of 1986  
Part 2—Sittings, Powers and Procedures

s. 28

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

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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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**PART 3—CONCURRENT ADMINISTRATION OF LAW AND EQUITY**

**29. Law and equity to be concurrently administered**

No. 6387  
s. 62(5).

- (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.

**30. Power to stay proceedings**

No. 6387  
s. 61(5).

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.

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**PART 4—INFERIOR COURTS**

No. 6387 s. 58.

**31. Power of inferior courts with equity jurisdiction**

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.

No. 6387 s. 59.

**32. Transfer of proceeding from inferior court**

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

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

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

S. 32(1) amended by No. 43/1991 s. 36(a).  
  
S. 32(2)–(5) repealed by No. 43/1991 s. 36(b).

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**33. Rules of law to apply to inferior courts**

No. 6387 s. 60.

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.

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

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

## PART 4A—GROUP PROCEEDING

### Division 1—Preliminary

#### 33A. Definitions

In this Part—

**"Chapter I of the Rules"** means the Supreme Court (General Civil Procedure) Rules 1996;

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

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

**"group proceeding"** means a proceeding commenced under this Part;

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

**"person under disability"** means a minor or handicapped person;

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

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

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

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**33B. Application**

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

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

**Division 2—Commencement of Group Proceeding**

**33C. Commencement of proceeding**

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

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

a proceeding may be commenced by one or more of those persons as representing some or all of them.
- (2) A group proceeding may be commenced—
  - (a) whether or not the relief sought—
    - (i) is, or includes, equitable relief; or
    - (ii) consists of, or includes, damages; or

**s. 33D**

- (iii) includes claims for damages that would require individual assessment; or
- (iv) is the same for each person represented; and

(b) whether or not the proceeding—

- (i) is concerned with separate contracts or transactions between the defendant and individual group members; or
- (ii) involves separate acts or omissions of the defendant done or omitted to be done in relation to individual group members.

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

**33D. Standing**

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

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

**33E. Consent of group member**

- (1) Subject to sub-section (2), the consent of a person to be a group member is not required.

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- (2) None of the following persons is a group member unless the person gives consent in writing to being so—
- (a) the Commonwealth, a State or a Territory; or
  - (b) a Minister of the Commonwealth, a State or a Territory; or
  - (c) a body corporate established for a public purpose by a law of the Commonwealth, a State or a Territory, other than an incorporated company or association; or
  - (d) any judge, magistrate or other judicial officer of the Commonwealth, a State or a Territory; or
  - (e) any other officer of the Commonwealth, a State or a Territory, in his or her capacity as an officer.

**33F. Persons under disability**

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

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

**33G. Group proceeding not to be commenced in certain circumstances**

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

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



**s. 33H**

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

**33H. Originating process**

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

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

**33J. Right of group member to opt out**

- (1) The Court must fix a date before which a group member may opt out of a group proceeding.
- (2) A group member may opt out of the group proceeding by notice in writing before the date so fixed.
- (3) The Court, on the application of a group member, the plaintiff or the defendant, may extend the period within which a group member may opt out of the group proceeding.
- (4) Except with the leave of the Court, the trial of a group proceeding must not commence earlier than the date before which a group member may opt out of the proceeding.
- (5) Unless the Court otherwise orders, a person who has opted out of a group proceeding must be taken never to have been a group member.

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- (6) The Court, on the application of a person who has opted out of a group proceeding, may reinstate that person as a group member on such terms as the Court thinks fit.

**33K. Causes of action accruing after commencement**

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

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

s. 33KA

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

**33KA. Court powers concerning group membership**

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

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

**33L. Fewer than seven group members**

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

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

**33M. Distribution costs excessive**

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

If—

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

the Court may, by order—

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

**33N. Proceeding not to continue under this Part**

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

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

**s. 33P**

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

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

**33P. Consequences of proceeding not continuing under this Part**

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

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

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

**33Q. Where not all questions common**

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

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

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

**33R. Individual questions**

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

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

**33S. Directions for further proceedings**

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

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

**33T. Adequacy of representation**

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

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

s. 33U

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

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

### **33U. Stay of execution**

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

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

### **33V. Settlement and discontinuance**

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

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

### **33W. Settlement of individual claim**

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

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

### Division 3—Notices

#### 33X. When notice to be given

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

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



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

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

**33Y. Notices under section 33X**

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

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- (7) The failure of a group member to receive or respond to a notice does not affect a step taken, an order made, or a judgment given, in a proceeding.

**Division 4—Judgment, etc.**

**33Z. Judgment of the Court**

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

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

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

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

**33ZA. Constitution etc. of fund**

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

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

**33ZB. Effect of judgment**

A judgment given in a group proceeding—

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

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

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**Division 5—Appeals**

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

**33ZC. Appeals**

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

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

#### **Division 6—Miscellaneous**

##### **33ZD. Costs**

In a group proceeding, the Court—

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

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

##### **33ZE. Suspension of limitation periods**

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

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

s. 33ZF

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

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

**33ZF. General power of court to make orders**

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

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

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

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

- (a) set out a step that group members or a specified class of group members must take to be entitled to—
- (i) any relief under section 33Z; or
  - (ii) any payment out of a fund constituted under section 33ZA; or
  - (iii) obtain any other benefit arising out of the proceeding—
- irrespective of whether the Court has made a decision on liability or there has been an admission by the defendant on liability;
- (b) specify a date after which, if the step referred to in paragraph (a) has not been taken by a group member to whom the order applies, the group member is not entitled to any relief or payment or to obtain any other benefit referred to in that paragraph.

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**33ZH. Order in event of decision or admission on liability**

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

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

**33ZJ. Reimbursement of plaintiff's costs**

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

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



s. 33ZK

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

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**33ZK. Transitional provisions**

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

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**PART 5—MISCELLANEOUS RULES OF LAW**

**Division 1—General**

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

**36. Declaratory judgments**

No. 6387  
s. 62(1).

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.

**37. Injunctions and receivers**

No. 6387  
s. 62(2).

- (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 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.

No. 6387  
s. 62(1A).

### **39. Foreign law**

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.

No. 6387  
s. 63A.

### **40. Crown payments to be subject to attachment**

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.

No. 6387  
s. 63B.

### **41. Failure to prosecute not a bar to civil remedy**

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.

No. 6387  
s. 63C.

### **42. Property available to satisfy judgment debt**

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

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

(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), (c) and (ca) of that Act or any corresponding later provision is to be construed as if it did not contain any reference to a determination by the creditors by resolution or by the Court in relation to other property of the bankrupt.

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

#### 43. Standard time in Victoria

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

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

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

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

(2) If—

- (a) an expression of time occurs in an instrument; or
- (b) the doing or not doing of anything at a certain time has an effect in law—

the time is standard time as provided in 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**

No. 6387 s. 64. **45. Rule as to division of liability for damage or loss**

- (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.

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- (4) For the purposes of this section—
- (a) **"freight"** includes passage money and hire; and
  - (b) references to damage or loss caused by the fault of a vessel are to be construed as including reference to any salvage or other expenses that are consequent on that fault and recoverable at law by way of damages.

**46. Liability for loss of life or personal injuries**

No. 6387 s. 65.

- (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.

**47. Right of contribution**

No. 6387 s. 66.

- (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.

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

#### **Division 3—Fires**

No. 6387 s. 68.

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

- (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.

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**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.

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

No. 6387 s. 70.

- (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.

**51. Avoiding contract for payment of loan advanced during minority**

No. 6387 s. 71.

- (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.



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- (2) A person who—
- (a) in good faith; and
  - (b) for value; and
  - (c) without notice—
- is the holder or assignee of an instrument referred to in 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.

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

#### **Division 4A—Administration of children's funds**

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

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

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

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- (2) If any money, not being money to which sub-section (3) applies—
- (a) is paid into court—
    - (i) before the commencement of this section; or
    - (ii) after the commencement of this section in accordance with a judgment or order entered or made before the commencement of this section; and
  - (b) the money is being held in court on behalf of a child—

the Court may by order direct that the money be paid out to an administrator specified in the order.

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

S. 51A(5)  
amended by  
No. 30/2004  
s. 12(1)(2).

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

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

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

No. 6387 s. 72.

#### **52. Surety discharging liability to be entitled to securities**

- (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

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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**

#### **53. Definitions**

No. 6387 s. 76.

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

- (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.

No. 6387 s. 74.

**55. Time when apportioned part is to be payable**

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.

No. 6387 s. 75.

**56. Recovery of apportioned parts**

- (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**

#### **57. Any interest may be contracted to be paid**

No. 6387 s. 77.

- (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**.

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

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.
- (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.

No. 6387 s. 79.

**59. Damages in nature of interest**

- (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 subsection (3).

#### **Division 8—Contempt of Court**

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

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

#### **61. Restoration of common law relating to contempt of court**

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

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

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

**PART 6—MISCELLANEOUS POWERS**

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

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

**Division 2—Delivery of documents**

Ss 70–75  
repealed by  
No. 35/1996  
s. 453(Sch. 1  
item 80.6).<sup>17</sup>

\* \* \* \* \*

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

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

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

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

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.

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

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**Division 4—Proceeding for Recovery of Land**

No. 6387  
ss 114, 116.

**79. Proceeding by landlord if rent is in arrears**

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

(1) If—

(a) 6 months' 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 months' 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.

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

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- (5) If the tenant at any time before the hearing—
- (a) pays or tenders to the landlord or to the executor, administrator or legal practitioner of the landlord; or
  - (b) pays into court—  
the rent and arrears together with full costs, the proceeding under this section ceases.
- (6) Nothing in this section bars the right of a mortgagee of the lease or a part of the lease who is not in possession to pay, within 6 months after the enforcement of the judgment, all rent in arrears and all costs and damages sustained by the landlord and perform all the covenants and agreements which are to be performed by the tenant.

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

**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 subsection (2)(a) if the parties cannot agree on its amount;

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- (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
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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.

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

(4) Nothing in this section—

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

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

**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.

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**Division 6—Arrest in Pending Proceedings**

**86. Arrest on mesne process abolished**

No. 6387  
s. 127.

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**

No. 6387  
s. 131.

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.

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

**93. Restrictions on execution of order**

No. 6387  
s. 132.

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—

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

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

**94. Execution on a Sunday**

No. 6387  
s. 133.

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

**95. Privilege from arrest**

No. 6387  
s. 134.

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. 135.

### 96. Misdescription of defendant

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

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

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

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 legal practitioner or, if the plaintiff is suing in person, by the plaintiff.
- (3) The defendant is entitled to be discharged out of custody if—
  - (a) the receipt or certificate referred to in this section is delivered to the sheriff, deputy sheriff or other officer having the execution of the order; and
  - (b) the sheriff's fees and allowances are paid.

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

**99. Date of arrest**

No. 6387  
s. 140.

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 assessable by the Taxing Master, from the date of the order of the Taxing Master stating the result of the assessment or such other date as the Court orders.
- (2) The amount of the interest must be stated in the body of, and may be levied under, a warrant of execution on the judgment.

S. 101(1)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 122).

**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 subsection (1), the minor becomes a ward of Court on the making of the application but ceases to be a ward at the end of the period prescribed by the Rules unless within that period an order has been made in accordance with the application.
- (3) The Court may, either on an application or of its own motion, order that a minor who is a ward of Court shall cease to be a ward.

#### **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.

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**PART 7—OFFICERS**

**Division 1—Appointments**

**104. Power to appoint Masters<sup>18</sup>**

No. 6387  
s. 180.  
S. 104  
amended by  
No. 64/1990  
s. 3(a).

- (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—
- (a) is or has been a judge or magistrate of—
    - (i) the High Court of Australia or of a court created by the Parliament of the Commonwealth; or
    - (ii) a court of Victoria or of another State or of the Northern Territory or the Australian Capital Territory; or
  - (b) has been admitted to legal practice in Victoria, another State, the Northern Territory or the Australian Capital Territory, or has been enrolled as a legal practitioner of the High Court of Australia, for not less than 5 years.

S. 104(1)  
amended by  
No. 109/1994  
s. 22(1)(c).

S. 104(3)  
amended by  
No. 109/1994  
s. 22(1)(d),  
substituted by  
No. 31/2004  
s. 12.

Supreme Court Act 1986  
No. 110 of 1986  
Part 7—Officers

s. 104

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

S. 104(3A)(b)  
amended by  
No. 16/2005  
s. 6(1).

S. 104(3A)(ba)  
inserted by  
No. 16/2005  
s. 6(2).

S. 104(4)  
amended by  
No. 109/1994  
s. 22(1)(e).

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

S. 104(4)(b)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 194).

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

- (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 in Council in accordance with Part IIIAA of the **Constitution Act 1975**; or
  - (ba) if his or her office is abolished by or under an Act; 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—
- (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 Administration Act 2004**.
- (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—

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

- (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**

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

(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—

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

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.

**s. 104A**

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

(1A) A Master who—

(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.

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

(1B) A Master who—

(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 sub-section (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 3/8ths 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.

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- (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 legal practice in any State or Territory or is employed by a law practice in connection with the practice's legal practice in any State or Territory.
- (8) Sub-section (7) applies unless the Governor in Council by Order otherwise determines in any particular case.

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

s. 104B

- (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 and any payments of lump sums provided by the commutation of those pensions are payable out of the Consolidated Fund which is appropriated to the necessary extent.

S. 104A(11)  
amended by  
No. 19/2001  
s. 20.

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

**104B. Election of Masters to commute future pensions for payment of superannuation contributions surcharge**

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

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

**104C. Actuary's first calculation after election of Masters to commute pensions**

- (1) If an election under section 104B is in operation, within 10 days after the day on which a Master resigns, retires or dies while in office, the Minister must—
- (a) cause an actuary to determine the extent to which the former Master's pension and any future entitlement of the Master's spouse or eligible child to a pension upon the Master's death otherwise payable under this Act will be reduced subject to sub-section (4) and

S. 104C(1)(a)  
amended by  
No. 11/2002  
s. 3(Sch. 1  
item 59.2).

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- taking into account the lump sum to be provided by the commutation of part of the Master's total pension entitlement and that of his or her spouse or eligible child at the time at which the former Master became entitled to his or her pension for the purposes of payment of the whole of the liability for the superannuation contributions surcharge; and
- (b) notify the former Master or, if he or she has died, the former Master's spouse or eligible child of the actuary's determination under sub-section (1)(a).
- (2) A former Master or, if he or she has died, the former Master's spouse or eligible child may revoke the election under section 104B within 10 days after the Minister's notification under sub-section (1)(b).
  - (3) If an election under section 104B is in operation, the former Master's pension and any future entitlement of the former Master's spouse or eligible child to a pension upon the Master's death otherwise payable from time to time under this Act must be reduced to the extent determined under sub-section (1).
  - (4) For the purposes of sub-section (1)—
    - (a) the reduction of the former Master's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Master resigned or retired; and
    - (b) the reduction of any future entitlement of the Master's spouse or eligible child to a pension must not exceed 15% of an amount equal to the total pension entitlement of the Master's spouse and eligible children on the day on which the Master resigned, retired or died while in office; and
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- (c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and
- (d) each reduction must be applied from the entitlement day according to paragraph (a) or (b).

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

**104D. Actuary's second calculation after election of Masters to commute pensions and payment of lump sums**

- (1) If an election under section 104B is in operation, a former Master or, if he or she has died, the Master's spouse or eligible child must, within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the Master's pension or his or her spouse's or eligible child's pension, lodge with the Minister—
  - (a) a notice that authorises the Minister to pay the lump sum that is equal to the superannuation contributions surcharge on behalf of the former Master or his or her spouse or eligible child to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and
  - (b) a copy of the superannuation contributions surcharge notice.
- (2) Within 10 days after the day on which the Minister received the authorisation and a copy of the superannuation contributions surcharge notice under sub-section (1), the Minister must cause an actuary—
  - (a) to review the determination made under section 104C(1); and

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- (b) subject to section 104C(4), make any necessary adjustments to the determination and to the pension payable to the former Master and to any future entitlement of the former Master's spouse or eligible child to a pension upon the Master's death.
- (3) If an election under section 104B is in operation and the Minister has received an authorisation under sub-section (1), the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

**104E. Election of former Masters to commute pensions for payment of superannuation contributions surcharge**

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

- (1) If no election under section 104B is in operation, a former Master who is entitled to receive a pension under this Act may elect to have part of his or her pension and that of his or her spouse or eligible child, if any, commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the superannuation contributions surcharge arising because of the entitlement of the former Master or his or her spouse or eligible child to receive a pension under this Act.
- (2) An election under sub-section (1) must—
- (a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice is issued in respect of a former Master's pension or his or her spouse's or eligible child's pension; and

**s. 104F**

- (b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pension; and
- (c) authorise the Minister to pay the lump sum on behalf of the former Master or his or her spouse or eligible child to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and
- (d) be accompanied by a copy of the superannuation contributions surcharge notice.

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

**104F. Actuary's calculation after former Masters' election to commute pensions**

- (1) If an election under section 104E is in operation, the Minister must within 10 days after the day on which the Minister received the election—
  - (a) cause an actuary to determine the extent to which a former Master's pension and any future entitlement of the spouse or eligible child of the former Master to a pension upon the Master's death otherwise payable under this Act will be reduced subject to section 104G(3) and taking into account the specified amount of the lump sum to be provided by the commutation of the pensions; and
  - (b) notify the former Master or, if he or she has died, the former Master's spouse or eligible child of the actuary's determination under sub-section (1)(a).

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

**104G. Payment and commutation of pensions of former Masters**

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

- (1) If an election under section 104E is in operation, the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.
- (2) The former Master's pension and any future entitlement of the Master's spouse or eligible child to a pension upon the Master's death otherwise payable from time to time under this Act must be reduced to the extent determined under section 104F in consequence of the payment of the lump sum.
- (3) For the purposes of section 104F—
- (a) the reduction of the former Master's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Master resigned or retired; and
  - (b) the reduction of any future entitlement of the Master's spouse or eligible child to a pension must not exceed 15% of an amount equal to the total pension entitlement of the Master's spouse and eligible children on the day on which the Master resigned or retired; or
  - (c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the

Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and

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

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

**104H. Election of Masters' spouses and eligible children to commute pensions for payment of superannuation contributions surcharge**

- (1) If no election made under section 104B or 104E is in operation, a person who is entitled to receive a pension under this Act as the spouse or eligible child of a deceased former Master may elect to have part of his or her pension commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the superannuation contributions surcharge arising because of the entitlement of the former Master to receive a pension under this Act or the entitlement of the deceased former Master's spouse or eligible child to receive a pension under this Act.
- (2) An election under sub-section (1) must—
- (a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the deceased former Master's pension or his or her spouse's or eligible child's pension; and
  - (b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pension; and
  - (c) authorise the Minister to pay the lump sum on behalf of the person who is entitled to receive a pension under this Act as the spouse or eligible child of a deceased former Master to the Commissioner of Taxation to

- be applied wholly towards payment of the superannuation contributions surcharge; and
- (d) be accompanied by a copy of the superannuation contributions surcharge notice.

**104I. Actuary's calculation of reduction of pensions of Masters' spouses and eligible children**

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

- (1) If an election is made under section 104H, the Minister must within 10 days after the day on which the Minister received the election—
- (a) cause an actuary to determine the extent to which the pension of a person who is entitled to receive a pension under this Act as the spouse or eligible child of a deceased former Master otherwise payable under this Act will be reduced subject to section 104J(3) and taking into account the specified amount of the lump sum to be provided by the commutation of the pension; and
- (b) notify the person of the actuary's determination under sub-section (1)(a).
- (2) A person who is entitled to receive a pension under this Act as the spouse or eligible child of a deceased former Master may revoke his or her election under section 104H within 10 days after the Minister's notification under sub-section (1)(b).

**104J. Payment and commutation of pensions of former Masters' spouses and eligible children**

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

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

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- (2) On payment of the lump sum, the pension of a person entitled to receive a pension as the spouse or eligible child of the deceased former Master otherwise payable from time to time under this Act must be reduced to the extent determined under section 104I.
- (3) For the purposes of section 104I—
- (a) the reduction of any future entitlement of the Master's spouse or eligible child to a pension must not exceed 15% of—
    - (i) an amount equal to the total pension entitlement of the Master and his or her spouse and eligible children on the day on which the Master resigned or retired; or
    - (ii) in the case of the Master's death while in office, an amount equal to his or her spouse's and eligible children's total pension entitlement on the day on which the Master died; and
  - (b) the reduction must be a fixed percentage to be applied to the pension entitlement under the Act; and
  - (c) the reduction must be applied from the day of payment of the lump sum under sub-section (1).

No. 6387  
s. 181.

**105. Acting appointments<sup>19</sup>**

- (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 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.

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

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

No. 6387  
s. 182.

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

S. 106  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 194).

- (a) a chief executive officer, a prothonotary, 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.

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



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.

No. 6387  
s. 184.

### **108. Powers of deputies**

- (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.

No. 6387  
s. 185.

### **109. Appointment of bailiffs and assistant bailiffs**

- (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.

### **111A. Functions of Registrar of the Court of Appeal<sup>20</sup>**

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

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<sup>21</sup>**

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

- (1) The Listing Master is, subject to the general direction and control of the Chief Justice, responsible for—
- (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 imposed or conferred on him or her by the Chief Justice or the Rules.

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

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

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

- (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;

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

- (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;

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

- (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 assess and settle bills of costs and for that purpose has all the powers and authorities of the Court.

S. 112(3) amended by No. 52/1998 s. 311(Sch. 1 item 88.1) (as amended by No. 101/1998 s. 22(1)(m)).

Note: The Taxing Master also has functions in relation to costs reviews under Division 7 of Part 3.4 of the **Legal Profession Act 2004**.

Note to s. 112(3) inserted by No. 18/2005 s. 18(Sch. 1 item 103.6).

### 113. Common Funds

No. 6387 s. 189.

- (1) Subject to section 66 of the **Guardianship and Administration Act 1986** and section 51A of this Act, all money paid into court under an order of the Court or under any Act or the Rules is to be held by the Senior Master.
- (2) In addition to Common Fund No. 1 and the other Common Funds established before the commencement of this Act by or under the **Supreme Court Act 1958** and Common Fund No. 3 established by section 113A of this Act, there may be established, by and in accordance with the Rules or under sub-section (26), more Common Funds, each to be identified by an appropriate distinguishing number.
- (3) Unless the Senior Master otherwise determines, no money is to be invested in Common Fund No. 1 after the commencement of this Act.
- (4) Money held by the Senior Master, including money forming part of a Common Fund (except Common Fund No. 3), may be invested—

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

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

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

\* \* \* \* \*

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

s. 113

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

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

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

\* \* \* \* \*

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

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

- (5) Money forming part of a Common Fund (except  
Common Fund No. 3) may be invested in any  
class of investment authorised under the Rules.
- (6) Subject to the Rules and to any order of the Court,  
the Senior Master must transfer any money  
received by the Senior Master on behalf of any  
person, estate or trust to a Common Fund, unless  
the Senior Master considers it desirable for any  
special reason to invest it on separate account.
- (7) Investments made from money forming part of a  
Common Fund are not made on account of, and  
do not belong to, any particular person, estate or  
trust.
- (8) Subject to 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.

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- (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) Subject to section 113A and unless otherwise expressly provided by the rules under which a Common Fund is constituted—
- (a) no capital appreciation or depreciation in the value of any investments made or taken to have been made from a Common Fund are to be taken to increase or diminish the amount at credit in the Common Fund on the account of any person, estate or trust; and
  - (b) on the withdrawal from the Common Fund of any amount transferred to it, the person, estate or trust in question is entitled to be credited with the actual amount so transferred without regard to any capital appreciation or depreciation.
- (13) Interest received from the investment of money forming part of a Common Fund (except Common Fund No. 3) is to be paid into an account to be called the "Interest Suspense Account" of that Common Fund and to be allocated as provided in sub-section (14).

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

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

**s. 113**

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

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

(15) The Senior Master, with the approval of the Chief Justice, may fix different rates of interest according to—

**S. 113(15)(a)**  
amended by  
No. 30/2004  
s. 3(8).

(a) the source and nature of the different amounts transferred to a Common Fund (except Common Fund No. 3);

(b) the periods for which those amounts will probably remain in the Fund;

(c) such other factors as they consider relevant.

(16) At such time or times in each year as the Senior Master determines, such amount of the money at credit in each Interest Suspense Account as the Senior Master considers necessary must, after providing for all interest payable to the credit of persons, estates and trusts, be carried to the credit of an account to be called the "Common Funds Guarantee and Reserve Account".

**S. 113(17)**  
amended by  
No. 30/2004  
s. 3(9).

(17) All capital profit made on the realization of investments from a Common Fund (except Common Fund No. 3) must also be carried to the credit of the Common Funds Guarantee and Reserve Account.

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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;
- (ba) Payments of any costs, expenses and charges incurred in respect of staff employed in connection with the administration of a Common Fund as in the opinion of the Senior Master are properly chargeable against the Common Funds Guarantee and Reserve Account;

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

- (bb) Payments of any costs, expenses and charges incurred in respect of—
  - (i) legal advice obtained in relation to a person, estate or trust; or
  - (ii) legal proceedings to which a person, estate or trust is a party—

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

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

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



s. 113

(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—

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

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

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

\* \* \* \* \*

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 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

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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 (except Common Fund No. 3) is insufficient to meet a proper claim on it, the amount of that claim, so far as it cannot be met from the Common Fund, must be paid out of the Consolidated Fund, which is hereby to the necessary extent appropriated accordingly.
- (24) In order to admit of the money in a Common Fund being kept closely invested, the Senior Master may obtain advances to the Common Fund from any authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth by the deposit by way of equitable mortgage of any securities held by the Senior Master in respect of investments from the Common Fund.
- (25) The aggregate amount of advances made to the Common Funds by any authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth and outstanding at any one time must not exceed \$1 000 000.

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

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

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

s. 113A

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

- (26) Subject to the Rules, the Senior Master may, with the consent of the Treasurer and the Chief Justice, enter into arrangements with the State Trust for or with respect to all or any of the following matters—
- (a) to undertake the management and investment of money held by the Senior Master;
  - (b) to maintain the accounts required to be kept by 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. 113A  
inserted by  
No. 30/2004  
s. 4.

**113A. Common Fund No. 3**

- (1) In this section, "**prescribed financial market**" has the same meaning as in section 9 of the Corporations Act.
- (2) There is established a Common Fund to be known as Common Fund No. 3.
- (3) On the commencement of section 4 of the **Courts Legislation (Funds in Court) Act 2004**—
  - (a) the interest of any person, estate or trust in a security listed on a prescribed financial market and held by the Senior Master on separate account under section 113(6) immediately before that commencement is cancelled;
  - (b) all securities of a kind referred to in paragraph (a) are transferred to Common Fund No. 3;

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

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

**113B. Senior Master to have certain powers of administrator**

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

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

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

**Division 3—The Sheriff**

**114. Definition**

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

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**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.

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

No. 6387  
s. 191.

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 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.

No. 6387  
s. 194.

### 119. Duties on arrest of civil debtors

- (1) If an officer arrests or has in custody any person under the provisions of section 7 of the **Crown Proceedings Act 1958** or Division 6 of Part 6, that person must be lodged in the prison nearest to the place of arrest or, with that person's consent, in any other prison and, subject to 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.
- (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 **Corrections Act 1986**.

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

## **120. Liability for wrongful imprisonment**

No. 6387 s. 195.

- (1) A person unlawfully imprisoned by the sheriff or any of the sheriff's officers has an action against the sheriff in like manner as against any other



person who should imprison him or her without warrant.

- (2) If a person in the custody of the sheriff or of any other person either in execution or for non-performance of a judgment or order of the Court or for contempt of the Court or otherwise in the course of a proceeding escapes out of legal custody, the sheriff or other person is liable to pay the damages sustained by the person at whose suit the prisoner was taken into custody and all costs of recovering those damages but not any further sum.
- (3) There is no liability under this section for the escape of a prisoner when confined in a prison.

No. 6387  
s. 196.

#### **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.

- (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.

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**123. Punishment for misconduct**

No. 6387  
s. 198.

(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.

No. 6387  
s. 199.

**124. Offence to assault an officer or rescue goods**

- (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.

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

- (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.

**Division 4—General**

No. 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.

**126. Offence to fail to assist sheriff**

No. 6387  
s. 202.

- (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.

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.

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

**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—

Supreme Court Act 1986  
No. 110 of 1986  
Part 7—Officers

s. 128A

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

\* \* \* \* \*

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 subsection (1) must be paid into the Consolidated Fund.

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

**128A. Supreme Court—limitation of jurisdiction**

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

No. 6387  
s. 205.

**129. Regulations**

(1) The Governor in Council may make regulations for or with respect to—

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

(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;

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- (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.
- (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—

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

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

- (3) The prothonotary or a deputy prothonotary at or for the place where a proceeding is to be heard may, having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay a fee prescribed under 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.

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

Supreme Court Act 1986  
No. 110 of 1986  
Part 8—Transitionals and Savings

s. 139

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

**PART 8—TRANSITIONALS AND SAVINGS**

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

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

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**139. Transitional and savings**

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

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

**139A. Transitional provision**

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

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



s. 140

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

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

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

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

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

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

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\* \* \* \* \*

Sch.  
amended by  
Nos 55/1987  
s. 57(1),  
53/1988  
s. 45(Sch. 3  
item 75) (as  
amended by  
No. 47/1989  
s. 23(2)),  
124/1993  
s. 4(4),  
52/1994  
s. 97(Sch. 3  
items 31.1,  
31.2),  
repealed by  
No. 51/2000  
s. 11(d).

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 23 October 1986*

*Legislative Council: 5 December 1986*

The long title for the Bill for this Act was "A Bill to amend and consolidate the law relating to the Supreme Court, to repeal the **Supreme Court Act 1958**, to amend the **Constitution Act 1975**, to amend various Acts in relation to procedure in the Supreme Court, to vary the law applicable to civil litigation in Victoria and for other purposes."

The **Supreme Court Act 1986** was assented to on 16 December 1986 and came into operation on 1 January 1987: section 2.

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## 2. Table of Amendments

This Version incorporates amendments made to the **Supreme Court Act 1986** by Acts and subordinate instruments.

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### **Community Services Act 1987, No. 16/1987**

*Assent Date:* 12.5.87  
*Commencement Date:* Ss 4(3)(Sch. 1 item 21), 12 on 22.2.89: Government Gazette 22.2.89 p. 386; Sch. 2 item 11 on 15.3.89: Government Gazette 15.3.89 p. 587  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

### **State Trust Corporation of Victoria Act 1987, No. 55/1987**

*Assent Date:* 27.10.87  
*Commencement Date:* 2.11.87: Government Gazette 28.10.87 p. 2925  
*Current State:* All of Act in operation

### **Subdivision Act 1988, No. 53/1988** (as amended by No. 47/1989)

*Assent Date:* 31.5.88  
*Commencement Date:* 30.10.89: Government Gazette 4.10.89 p. 2532  
*Current State:* All of Act in operation

### **Legal Profession Practice (Amendment) Act 1989, No. 35/1989**

*Assent Date:* 6.6.89  
*Commencement Date:* S. 23 on 20.9.89: Government Gazette 20.9.89 p. 2404  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

### **Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989**

*Assent Date:* 14.6.89  
*Commencement Date:* S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217  
*Current State:* All of Act in operation

### **Courts (Amendment) Act 1990, No. 64/1990**

*Assent Date:* 20.11.90  
*Commencement Date:* Ss 3, 4, 7, 8 on 1.1.91: Government Gazette 19.12.90 p. 3750; s. 14 on 18.11.91: Government Gazette 13.11.91 p. 3083  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

### **Crimes (Sexual Offences) Act 1991, No. 8/1991**

*Assent Date:* 16.4.91  
*Commencement Date:* S. 19(1) on 5.8.91: Government Gazette 24.7.91 p. 2026  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

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**Courts (Case Transfer) Act 1991, No. 43/1991**

*Assent Date:* 18.6.96  
*Commencement Date:* S. 2, Pt 9 (ss 39–41) on 1.8.91; rest of Act on 1.10.91:  
Government Gazette 17.7.91 p. 1930  
*Current State:* All of Act in operation

**Health and Community Services (Further Amendment) Act 1993, No. 124/1993**

*Assent Date:* 7.12.93  
*Commencement Date:* S. 4(4) on 18.12.94: Government Gazette 15.12.94  
p. 3308  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Financial Management Act 1994, No. 18/1994**

*Assent Date:* 10.5.94  
*Commencement Date:* Pt 1 (ss 1–8), ss 60, 61 on 10.5.94: s. 2(1); rest of Act  
on 1.7.94: s. 2(2)  
*Current State:* All of Act in operation

**State Trustees (State Owned Company) Act 1994, No. 45/1994**

*Assent Date:* 7.6.94  
*Commencement Date:* Pt 1 (ss 1–3), s. 27 on 7.6.94: s. 2(1); rest of Act on  
1.7.94: Special Gazette (No. 36) 23.6.94 p. 1  
*Current State:* All of Act in operation

**Catchment and Land Protection Act 1994, No. 52/1994**

*Assent Date:* 15.6.94  
*Commencement Date:* S. 97(Sch. 3 items 31.1, 31.2) on 15.12.94: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Constitution (Court of Appeal) Act 1994, No. 109/1994**

*Assent Date:* 20.12.94  
*Commencement Date:* Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95:  
Special Gazette (No. 41) 23.5.95 p. 1  
*Current State:* All of Act in operation

**Courts (General Amendment) Act 1995, No. 9/1995**

*Assent Date:* 26.4.95  
*Commencement Date:* Ss 7(5), 11(1) on 27.4.95: Government Gazette  
27.4.95 p. 973  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Judicial Remuneration Tribunal Act 1995, No. 22/1995**

*Assent Date:* 16.5.95  
*Commencement Date:* S. 20 on 28.9.95: Government Gazette 28.9.95 p. 2731  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

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**Consumer Credit (Victoria) Act 1995, No. 41/1995**

*Assent Date:* 14.6.95  
*Commencement Date:* S. 62(Sch. 1 item 8) on 1.11.96: Government Gazette  
29.8.96 p. 2274  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Legal Practice Act 1996, No. 35/1996**

*Assent Date:* 6.11.96  
*Commencement Date:* S. 453(Sch. 1 items 80.1–80.10) on 1.1.97: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Courts and Tribunals (General Amendment) Act 1996, No. 64/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* Pt 10 (ss 41–43), s. 48 on 17.12.96: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Evidence (Audio Visual and Audio Linking) Act 1997, No. 4/1997**

*Assent Date:* 22.4.97  
*Commencement Date:* S. 5 on 22.12.97: Government Gazette 18.12.97  
p. 3612  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Law and Justice Legislation (Further Amendment) Act 1997, No. 84/1997**

*Assent Date:* 2.12.97  
*Commencement Date:* S. 53 on 1.8.98: s. 2(8)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Legal Practice (Amendment) Act 1997, No. 102/1997**

*Assent Date:* 16.12.97  
*Commencement Date:* S. 49(Sch item 5) on 16.12.97: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**State Trustees (Amendment) Act 1998, No. 15/1998**

*Assent Date:* 28.4.98  
*Commencement Date:* S. 11 on 1.8.98: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s  
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**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,  
No. 52/1998** (as amended by No. 101/1998)

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 88) on 1.7.98: Government Gazette  
18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Magistrates' Court (Amendment) Act 1999, No. 10/1999**

*Assent Date:* 11.5.99  
*Commencement Date:* Ss 25, 26 on 11.5.99: s.2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Public Prosecutions (Amendment) Act 1999, No. 62/1999**

*Assent Date:* 21.12.99  
*Commencement Date:* 22.12.99: s. 2  
*Current State:* All of Act in operation

**Courts and Tribunals Legislation (Further Amendment) Act 2000, No. 51/2000**

*Assent Date:* 5.9.00  
*Commencement Date:* Ss 10, 11 on 6.9.00: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 122) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Courts and Tribunals Legislation (Miscellaneous Amendment) Act 2000,  
No. 78/2000**

*Assent Date:* 28.11.00  
*Commencement Date:* S. 13 on 1.1.00: s. 2(2); ss 14–16 on 28.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001,  
No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 71) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Gaming and Betting Act 1994**

**Constitution (Supreme Court) Act 2001, No. 12/2001**

*Assent Date:* 22.5.01  
*Commencement Date:* S. 6 on 1.1.00: s. 2(2); s. 5 on 23.5.01: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Supreme Court Act 1986**

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**Judicial and Other Pensions Legislation (Amendment) Act 2001, No. 19/2001**

*Assent Date:* 29.5.01  
*Commencement Date:* Ss 19–21 on 30.5.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 107) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Statute Law (Further Revision) Act 2002, No. 11/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. 1 item 59) on 24.4.02: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Supreme Court (Vexatious Litigants) Act 2003, No. 71/2003**

*Assent Date:* 14.10.03  
*Commencement Date:* 15.10.03: s. 2  
*Current State:* All of Act in operation

**Courts Legislation (Funds in Court) Act 2004, No. 30/2004**

*Assent Date:* 1.6.04  
*Commencement Date:* Ss 3, 4, 12 on 1.7.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Courts Legislation (Judicial Appointments) Act 2004, No. 31/2004**

*Assent Date:* 1.6.04  
*Commencement Date:* S. 12 on 2.6.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 194) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Courts Legislation (Judicial Conduct) Act 2005, No. 16/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 6 on 28.4.06: Special Gazette (No. 119) 28.4.06 p. 1  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Justice Legislation (Amendment) Act 2005, No. 17/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* Ss 7, 8 on 1.9.05: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**



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**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 103) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

**Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 42(Sch. item 34) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Supreme Court Act 1986**

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### 3. Explanatory Details

<sup>1</sup> S. 3(1) def. of "Chief Justice": Sections 29, 30 of the **Constitution (Court of Appeal) Act 1994**, No. 109/1994 read as follows:

#### 29. Proceedings before Full Court

- (1) The **Constitution Act 1975**, the **Supreme Court Act 1986** and the **Crimes Act 1958** and any other Act amended by this Act as respectively in force immediately before the commencement of this section continue to apply, despite the enactment of this Act, to a proceeding the hearing of which by the Full Court of the Supreme Court commenced before the commencement of this section.
- (2) If the Court of Appeal so orders, anything required to be done by the Supreme Court in relation to or as a consequence of a proceeding after the Full Court has delivered judgment in that proceeding, may be done by the Court of Appeal.

#### 30. References to Full Court

A reference in an Act or an instrument made under an Act or in any other document to the Full Court of the Supreme Court or to the Supreme Court sitting as the Full Court is to be taken to include a reference to the Court of Appeal.

<sup>2</sup> S. 3(1) def. of "Court of Appeal": See note 1.

<sup>3</sup> S. 3(1) def. of "Full Court" (repealed): See note 1.

<sup>4</sup> S. 3(1) def. of "Judge of Appeal": See note 1.

<sup>5</sup> S. 3(1) def. of "Master": See note 1.

<sup>6</sup> S. 3(1) def. of "President": See note 1.

<sup>7</sup> S. 3(1) def. of "Trial Division": See note 1.

<sup>8</sup> Ss 8, 9 (*repealed*): See note 1.

<sup>9</sup> Pt 2 Div. 2: See note 1.

<sup>10</sup> Pt 2 Div. 2A: See note 1.

<sup>11</sup> S. 19(e): See 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.
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 amendments 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. 81/1991 section 8(a)(b).**

<sup>12</sup> S. 20A: See note 1.

<sup>13</sup> S. 24A: Section 48 of the **Courts and Tribunals (General Amendment) Act 1996**, No. 64/1996 reads as follows:

**48. Supreme Court Act 1986—transitional provision**

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

<sup>14</sup> S. 25: See note 1.

<sup>15</sup> 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.

<sup>16</sup> S. 25(1)(ec): See note 15.

<sup>17</sup> 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.

<sup>18</sup> S. 104: See note 1.

<sup>19</sup> S. 105: See note 1.

<sup>20</sup> S. 111A: See note 1.

<sup>21</sup> S. 112: See note 1.