

## JUSTICE AND THE ADMINISTRATION OF LAW

---

### INTRODUCTION

This chapter describes the operation of law in Victoria. The workings of the legal system are far-reaching and the relationships sometimes complex. In order to clarify the exposition of the main aspects of law in Victoria, the chapter is divided into three sections:

- (1) The main features of the judicial system, listing the members of the Victorian Judiciary, and outlining the workings of the courts and the legal profession;
- (2) the administration and enforcement of law in Victoria, showing the responsibilities of the main departments and agencies concerned, including the Victoria Police; and
- (3) a special article outlining a specific area of law in Victoria (National Companies and Securities Commission in this edition of the *Victorian Year Book*).

### JUDICIAL SYSTEM

#### Victorian Judiciary

#### VICTORIA—SUPREME COURT AT 31 JULY 1982

---

##### *Chief Justice*

The Hon. Sir John McIntosh Young, K.C.M.G.

##### *Puisne Judges*

The Hon. Sir John Erskine Starke  
 The Hon. Sir Murray Vincent McInerney  
 The Hon. Sir George Hermann Lush  
 The Hon. Sir Kevin Victor Anderson  
 The Hon. Sir James Augustine Gobbo  
 The Hon. Mr Justice William Charles Crockett  
 The Hon. Mr Justice William Kaye  
 The Hon. Mr Justice Peter Murphy  
 The Hon. Mr Justice Basil Lathrop Murray, C.B.E.  
 The Hon. Mr Justice Richard Kelsham Fullagar  
 The Hon. Mr Justice Kenneth Joseph Jenkinson  
 The Hon. Mr Justice Richard Elgin McGarvie  
 The Hon. Mr Justice Norman Michael O'Bryan  
 The Hon. Mr Justice Robert Brooking  
 The Hon. Mr Justice Kenneth Henry Marks  
 The Hon. Mr Justice Ian Gray  
 The Hon. Mr Justice Alfred Capel King  
 The Hon. Mr Justice Barry Watson Beach  
 The Hon. Mr Justice Alec James Southwell  
 The Hon. Mr Justice Robert Clive Tadgell

---

## VICTORIA—JUDGES OF THE COUNTY COURT AT 31 JULY 1982

*Chief Judge*

Glenn Royce Donal Waldron

*Judges*

Norman Alfred Vickery, M.B.E., M.C., E.D.	Stanley George Hogg
Dermot William Corson	Martin Charles Ravech
James Herbert Forrest	John Frederick Bernard Howse
Clive William Harris	Leo Sydney Lazarus
Eric Edgar Hewitt	John Leonard Read
Gordon Just	Peter Uno Rendit
Roland John Leckie	Eugene John Cullity
Ivan Frederick Charles Franich	John Ewen Raymond Bland
Thomas Bernard Shillito	Francis Gilbert Dyett
Joseph Raymond O'Shea	Paul Richard Mullaly
James Galvin Gorman	Noel Stuart Tye Murdoch
Robert John Davern Wright	Alan Elmslie Dixon
Geoffrey Michael Byrne	William Michael Raymond Kelly
Harold George Ogden	John King Nixon
Nubert Solomon Stabey	Gay Vandeleur Tolhurst
Bruce Finlay McNab	Francis Walsh
Gordon Henry Spence	

*Courts**High Court of Australia*

The High Court of Australia was created by the Commonwealth of Australia Constitution which provided for the vesting of the judicial power of the Commonwealth "in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such courts as it invests with federal jurisdiction". The Constitution also provided that the High Court should consist of a Chief Justice and so many other Justices not less than two, as the Commonwealth Parliament prescribes.

In 1903, the High Court was first constituted by the appointment of Sir Samuel Griffith (Chief Justice) and Justices Barton and O'Connor who held the first sittings of the High Court in Melbourne in October 1903 and sat shortly afterwards in Sydney in the same year.

The number of Justices was increased from three to five in 1906 and was again increased in 1912 to seven. In 1933, the number was reduced to six and in 1946, the number of Justices was restored to seven. The Justices, prior to a Constitutional amendment in 1977, were appointed for life. As a result of a referendum in 1977, the Constitution was amended to provide, in section 72, that the appointment of a Justice shall be for a term expiring upon his attaining the age of seventy years.

The Constitution provided for the High Court to have jurisdiction to hear and determine appeals from all judgements, decrees, orders, and sentences of Justices of the High Court exercising original jurisdiction of that Court, or of any other federal court. It also provided that the High Court had the like jurisdiction to hear appeals from the Supreme Court of a State. The High Court thus became part of the hierarchy in the judicial system of each State. The Constitution provided also for the High Court to exercise original jurisdiction in matters arising under any treaty; affecting consuls or other representatives of other countries; in which the Commonwealth or a person being sued on behalf of the Commonwealth is a party; and between residents of different States or between a State and a resident of another State, or in which a writ of mandamus\* or prohibition or injunction is sought against an officer of the Commonwealth.

The original jurisdiction of the High Court has been exercised over the years to a considerable degree, in particular by the use of prerogative writs of prohibition and mandamus in relation to Commonwealth officers, and to control the jurisdiction of

\* A form of writ to compel a person or body to carry out the duty which they are required to perform by law.

tribunals constituted under Commonwealth legislation, the Commonwealth Conciliation and Arbitration Commission, and other bodies.

In addition, the Constitution provided that the Commonwealth Parliament may make laws conferring jurisdiction on the High Court in any matter arising under the Constitution or involving its interpretation, arising under any laws made by the Commonwealth Parliament, and in admiralty or in maritime matters. Pursuant to the last-named provision the Commonwealth Parliament has in section 38 of the *Judiciary Act* 1903 conferred exclusive jurisdiction upon the High Court in:

- “(a) Matters arising directly under any treaty;
- (b) Suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State;
- (c) Suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State, or any person being sued on behalf of a State;
- (d) Suits by a State, or any person suing on behalf of a State, against the Commonwealth, or any person being sued on behalf of the Commonwealth;
- (e) Matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a federal court.”

In addition, jurisdiction has been conferred on the High Court under the Commonwealth Electoral Act whereby a Justice of the High Court sits as a Court of Disputed Returns.

The primary functions of the High Court are, first, interpreting the Commonwealth of Australia Constitution, and second, hearing and deciding appeals from judgements of the Federal Court of Australia, the Family Court of Australia (by special leave), and the Supreme Courts of the States.

The Constitution provided also that no appeals should be taken to the Privy Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth or those of any State or States or as to the limits *inter se* of the constitutional powers of any two or more States, unless the High Court decides that this question is one that should be determined by Her Majesty in Council. Under this particular section, over the years, a number of applications have been made to the High Court for such a certificate but in only one instance has a certificate subsequently been granted.

In 1968, the *Privy Council (Limitation of Appeals) Act* 1968 enacted that special leave to appeal to Her Majesty in Council from a decision of the High Court may be asked only in a matter where the decision of the High Court was given on appeal from the Supreme Court of a State otherwise than in the exercise of federal jurisdiction and did not involve the application or interpretation of the Constitution, or of a law made by the Commonwealth Parliament, or of an instrument made under a law made by the Commonwealth Parliament. The provisions of this Act do not apply in respect of a decision given in a proceeding commenced before the commencement of the Act, namely, 1 September 1968. Matters commenced after that date which involve federal jurisdiction may not be taken on appeal to the Privy Council.

The right of appeal has now been removed in these matters by the *Privy Council (Limitations of Appeals) Act* 1968 and the *Privy Council (Appeals from the High Court) Act* 1975 unless the proceedings were commenced before 8 July 1975.

Section 10 of the *Judiciary Act* 1903 provided that the principal seat of the High Court should be at the seat of government and that until such time as the seat of government was established the principal seat of the High Court should be at such place as the Governor-General from time to time appointed.

By minute dated 2 October 1903, the Governor-General ordered and declared that until the seat of government should be established or until otherwise ordered, the principal seat of the High Court should be at Melbourne. In 1926, section 10 of the *Judiciary Act* was amended to provide that on and after a date to be fixed by proclamation the principal seat of the High Court should be at the seat of government and that until the date so fixed the principal seat of the High Court should be at such place as the Governor-General from time to time appointed. On 1 September 1980, the principal seat of the Court was proclaimed to be at Canberra.

*Supreme Court*

The Supreme Court, as its name implies, is the supreme court of the State, having jurisdiction over all matters, civil and criminal, which have not been excluded by statute. It is established by the Constitution Act. It is the counterpart of the English Supreme Court of Judicature which embodies the Court of Appeal and the High Court. The latter is divided into three divisions—Queen's Bench, Chancery, and Family. The Constitution Act provides for the Supreme Court to consist of not more than twenty-one judges of whom one is the Chief Justice. All judges are appointed from the ranks of practising barristers of not less than eight years standing, and retire at the age of 72 years. The Supreme Court consisted of a Chief Justice and 20 puisne judges at 1 July 1982. (Judges of the Supreme Court other than the Chief Justice are called puisne judges.)

The Full Court (usually three, and sometimes five, judges) hears and determines appeals from single judges of the Supreme Court and from the County Court, and criminal appeals from the Supreme Court and from the County Court. There is no general right of appeal in civil matters, *on the facts*, from a decision of a Magistrates' Court. Nevertheless, a dissatisfied party may apply to a Supreme Court judge to review the case, *on the law*.

The main activities of the Supreme Court are centred at Melbourne, but judges go "on circuit" to Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Sale, Shepparton, Wangaratta, and Warrnambool. Some of these circuit towns are visited three times a year, and every one of them is visited more than once a year.

The officers of the Supreme Court are the Masters (four in 1982), the Listing Master, the Taxing Master, the Prothonotary, the Sheriff, and the Registrar of Probates. The Masters deal with various matters entrusted to them by Rules of Court made by the judges, and are responsible for the investment of money ordered to be paid into court. The Listing Master arranges the lists of cases for hearing. The Taxing Master fixes and settles bills of costs. The Masters, the Listing Master, and the Taxing Master must be barristers and solicitors of five years standing, or, in the case of the Taxing Master, of equivalent experience. The Prothonotary is virtually the secretary of the Supreme Court. Writs are issued from his office, and he has the custody of documents filed therein. The Sheriff who, like the Prothonotary is a public servant (the Masters, the Listing Master, and the Taxing Master are not under the Public Service Act), is responsible for the execution of writs, the summoning of juries, and the enforcement of judgements. There is a Deputy Prothonotary and a Deputy Sheriff at all Supreme Court circuit towns. The Clerk of Courts acts as such in each instance. The Registrar of Probates and the Assistant Registrar of Probates deal with grants of probate and administration of the estates of deceased persons in accordance with section 12 of the *Administration and Probate Act 1958*.

Civil proceedings in the Supreme Court are commenced by the plaintiff issuing, through the Prothonotary's office, a writ (properly called a writ of summons) against the defendant from whom he claims damages or other relief. The writ is a formal document by which the Queen commands the defendant, if he wishes to dispute the plaintiff's claim, to "enter an appearance" within a specified time; otherwise judgement may be given in his absence. A defendant who desires to defend an action files a "memorandum of appearance" in the Prothonotary's office.

When the matter comes before the Supreme Court, it is desirable that the controversial questions between the two parties should be clearly defined. This clarification is obtained by each side in turn delivering documents, stating its own case, and answering that of its opponent. Such statements and answers are called "pleadings", and this method of clarifying the issues has been practised in England from the earliest times, and is as ancient as any part of English procedural law.

Ultimately the action comes to trial before a judge alone, or a judge and jury. When a judge sits alone he decides questions of both law and fact. If there is a jury, the judge directs them on the law; the jury decides the facts. The judgement of the Supreme Court usually provides for payment by the loser of the opponent's legal costs. Normally these are assessed by the Taxing Master. The unsuccessful party in the action has the right of appeal to the Full Court. If a successful plaintiff fails to obtain from the defendant money which the latter has been ordered to pay, he may issue a writ of *fieri facias*, addressed to

the Sheriff and directing him to sell sufficient of the defendant's real and personal property to satisfy the judgement.

Criminal proceedings are commenced in the Supreme Court by the filing of a "presentment" in the name of the Attorney-General and signed by him or by the Solicitor-General or by one of the Crown Prosecutors.

In many cases an appeal lies as of right to the High Court of Australia from decisions of the Supreme Court, but in others it can only be taken with the leave or special leave of the High Court. In some cases an appeal may be taken to the Privy Council from a decision of the Supreme Court but the leave of the Court must first be obtained. (With respect to appeals to the Privy Council from the High Court, see page 652.)

The following tables show particulars of Supreme Court business. In any comparison of the figures with those relating to earlier Victorian figures, other States, or other countries, consideration should be given to the following factors.

Law in the places compared should be substantially the same, and it should be administered with equal strictness. Proper allowances should also be made for changes in the law, for differences in the age and sex composition of the population, and for changes which may occur over time in the population structure. Changes in the civil jurisdiction of the courts and in the number of cases settled out of court also result in fluctuations in court business.

#### VICTORIA—SUPREME COURT: CIVIL BUSINESS

Particulars	1977	1978	1979	1980	1981
Causes entered—					
For assessment of damages	36	58	81	79	27
For trial	1,299	1,423	2,304	2,124	2,289
Number of cases listed for trial—					
By juries of six	1,150	1,001	1,291	748	1,332
By a Judge	682	681	896	657	937
Verdicts returned for—					
Plaintiff	148	180	221	275	n.a.
Defendant	18	17	22	21	24
Amount awarded (\$'000)	1,815	2,144	3,449	2,605	n.a.
Writs of summons issued	7,327	9,087	11,960	11,106	9,589
Other original proceedings	137	137	164	146	n.a.
Appellate proceedings (other than criminal appeals) heard and determined—					
By Full Court	76	63	53	49	59
By a Judge	120	135	114	131	n.a.

#### VICTORIA—SUPREME COURT: WRITS RECEIVED BY THE SHERIFF

Year	Possession	<i>Fieri Facias</i>	<i>Venditioni Exponas</i>	Attachment	Order to arrest, including ships	Other	Total
1977	662	1,178	4	4	4	25	1,877
1978	751	1,426	6	n.p.	n.p.	17	2,206
1979	1,120	1,611	15	3	7	21	2,777
1980	1,226	1,805	12	3	1	15	3,062
1981	1,265	1,441	23	—	4	11	2,744

The following tables have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS).

**VICTORIA—SUPREME COURT: TOTAL OFFENCES IN SPECIFIC CRIME DIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING IN A CONVICTION OR AN ACQUITTAL: RESULT OF HEARING, 1979**

Crime division	Imprisonment			Other court decisions	Total convictions	Total acquittals
	One year and under	Over 1 year	Life			
Offences against the person (includes homicide, assaults, sexual assaults, and other offences against the person)	10	39	16	28	93	59
Robbery and blackmail	10	111	—	9	130	15
Burglary, fraud, and other offences involving theft	63	19	—	67	149	17
Property damage and offences against good order (includes property damage, environmental offences, offences against government security, prostitution and related offences, offensive behaviour, and unlawful possession of weapons)	4	5	—	11	20	—
Drug offences	—	—	—	—	—	—

**VICTORIA—SUPREME COURT: TOTAL NUMBER OF APPEARANCES IN COURTS OF PERSONS WHO WERE CONVICTED OR ACQUITTED: RESULT OF HEARING, RECORDED BY MOST SERIOUS OFFENCE IN SPECIFIC CRIME DIVISIONS, 1979**

Crime division	Imprisonment			Other court decisions	Total convictions	Total acquittals
	One year and under	Over 1 year	Life			
Offences against the person (includes homicide, assaults, sexual assaults, and other offences against the person)	6	27	15	19	67	13
Robbery and blackmail	n.p.	52	—	n.p.	62	7
Burglary, fraud, and other offences involving theft	3	6	—	5	14	—
Property damage and offences against good order (includes property damage, environmental offences, offences against government security, prostitution and related offences, offensive behaviour, and unlawful possession of weapons)	n.p.	—	—	n.p.	9	—
Drug offences	—	—	—	—	—	—

*County Court*

The County Court has an extensive jurisdiction in civil and criminal matters and appeals from Magistrates' Courts and adoptions. The County Court has civil jurisdiction in personal injury actions where the amount claimed does not exceed \$25,000, and in all other actions where the amount claimed does not exceed \$12,000.

The County Court has criminal jurisdiction to hear all indictable offences (i.e., those in which the accused will generally be tried by a jury) apart from treason, murder, attempted murder, and certain other statutory exceptions.

In July 1981, the County Court comprised a Chief Judge (a position created in March 1975 in recognition of the increasing importance of the Court) and 33 judges. An appointee to the County Court bench must have practised as a barrister or solicitor for seven years before appointment and retires at the age of 72 years.

The County Court sits continuously at Melbourne and visits seven circuit towns as well as the ten towns also visited by the Supreme Court. County Court judges also preside over a number of tribunals, e.g., the five divisions of the Workers Compensation Board, the Industrial Appeals Court, and the Police Service Board.

An indication of the distribution of the work performed by County Court judges, excluding the Chief Judge, in a typical month is as follows: criminal cases, 10 judges; civil juries, 2 judges; civil causes, 4 judges; appeals, 2 judges; chambers and adoptions, 1 judge; circuit, 6 judges; Workers Compensation Board, 5 judges; and other tribunals, 2 judges.

The principal officer of the County Court is the Registrar of the County Court at Melbourne, who occupies a position parallel to that of the Prothonotary of the Supreme Court. He is a public servant appointed from among senior Clerks of Courts. The Clerk of Courts at each circuit town is also Registrar of the County Court.

The following tables show particulars of County Court business. In any comparison of the figures with those relating to earlier Victorian figures, other States, or other countries, consideration should be given to the factors described in the following paragraph.

Law in the places compared should be substantially the same, and it should be administered with equal strictness. Proper allowances should also be made for changes in the law, for differences in the age and sex composition of the population, and for changes which may occur over time in the population structure. Changes in the civil jurisdiction of the courts and in the number of cases settled out of court also result in fluctuations in court business.

#### VICTORIA—COUNTY COURT: MELBOURNE BUSINESS

Particulars	1977	1978	1979	1980	1981
Summonses issued	39,611	46,270	47,843	47,715	(a)20,452
Warrants of execution issued	14,559	17,426	18,702	17,292	(a)9,247
Appeals from Magistrates' Courts lodged	4,395	4,372	4,651	5,886	(b)2,139
Adoption applications filed	817	706	650	597	542
Civil trials heard	3,143	2,893	2,533	3,069	3,563
Criminal trials heard	1,352	1,118	1,202	1,218	1,424

(a) Decrease due to changes from November 1980 in jurisdiction of County Court.

(b) Total now refers to appellants, not cases as previously.

The following tables have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS).

#### VICTORIA—COUNTY COURT: TOTAL OFFENCES IN SPECIFIC CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING IN A CONVICTION OR AN ACQUITTAL: RESULT OF HEARING, 1979

Crime subdivision	Fined	Imprisonment		Other court decisions	Total convictions	Total acquittals
		One year and under	Over 1 year			
Homicide	4	—	14	7	25	28
Assaults (excluding sexual assaults)	27	92	31	44	194	108

VICTORIA—COUNTY COURT: TOTAL OFFENCES IN SPECIFIC CRIME  
SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING  
IN A CONVICTION OR AN ACQUITTAL: RESULT OF HEARING, 1979—*continued*

Crime subdivision	Fined	Imprisonment		Other court decisions	Total convictions	Total acquittals
		One year and under	Over 1 year			
Sexual assaults and offences	54	102	109	222	487	206
Other offences against the person	n.p.	11	10	n.p.	31	30
Robbery and blackmail	5	28	127	63	223	50
Burglary	12	492	75	309	888	82
Fraud and deception	65	424	26	314	829	176
Receiving and unlawful possession of stolen goods	19	32	11	50	112	42
Other theft	39	184	17	150	390	76
Property damage and environmental offences	25	64	12	96	197	31
Offences against government security, etc., and justice procedures	9	31	3	12	55	18
Prostitution and related offences	—	—	n.p.	—	n.p.	—
Offensive behaviour	—	—	—	—	—	n.p.
Unlawful possession of weapons	n.p.	—	n.p.	n.p.	4	4
Other offences against good order	13	23	10	29	75	18
Drug offences	3	7	30	5	45	17

VICTORIA—COUNTY COURT: TOTAL NUMBER OF APPEARANCES IN COURTS  
OF PERSONS WHO WERE CONVICTED OR ACQUITTED: RESULT OF  
HEARING, RECORDED BY MOST SERIOUS OFFENCE IN SPECIFIC  
CRIME SUBDIVISIONS, 1979

Crime subdivision	Fined	Imprisonment		Other court decisions	Total convictions	Total acquittals
		One year and under	Over 1 year			
Homicide	n.p.	—	12	n.p.	18	16
Assaults (excluding sexual assaults)	21	29	17	21	88	28
Sexual assaults and offences	32	26	51	94	203	52
Other offences against the person	n.p.	n.p.	n.p.	n.p.	10	11
Robbery and blackmail	4	14	69	48	135	17
Burglary	10	63	28	63	164	22
Fraud and deception	20	17	13	44	94	21
Receiving and unlawful possession of stolen goods	17	14	6	19	56	12
Other theft	15	26	5	37	83	21
Property damage and environmental offences	19	14	8	58	99	11
Offences against government security, etc., and justice procedures	9	21	n.p.	n.p.	39	8
Prostitution and related offences	—	—	—	—	—	—
Offensive behaviour	—	—	—	—	—	—
Unlawful possession of weapons	—	—	n.p.	n.p.	3	n.p.
Other offences against good order	13	5	8	19	45	11
Drug offences	3	3	24	5	35	7

*Magistrates' Courts*

Magistrates' Courts are held at Melbourne, in many suburbs, and country centres throughout Victoria. They are presided over either by a stipendiary magistrate, or by Justices of the Peace. Several divisions of the Court may sit simultaneously at the one location. Stipendiary magistrates are usually appointed from the ranks of Clerks of Courts, who must have passed qualifying examinations and have had practical experience as such clerks for ten years. In certain circumstances, barristers or solicitors may also be



appointed. They are members of the Victorian Public Service and retire on or before the age of 65 years but are completely independent of the Executive, as are other members of the judiciary.

Clerks of Courts are officers of the Court who are appointed under the Public Service Act. They perform administrative duties on behalf of the Court and government departments. Justices of the Peace act in an honorary capacity and are appointed from members of the community and may exercise judicial functions up to the age of 72 years.

There are more than 70 stipendiary magistrates throughout Victoria, and a much larger number of Justices of the Peace, who preside periodically over more than 200 courts in 17 Magistrates' Regions. All stipendiary magistrates are appointed coroners and in districts outside the area of the City Coroner they exercise the functions of coroners and hold inquests.

A Metropolitan Industrial Court constituted by specially appointed stipendiary magistrates hears charges laid under the Victorian Labour and Industry Act and committed in the Melbourne Metropolitan area. Outside that area these charges are dealt with by Stipendiary Magistrates in Magistrates' Courts.

Magistrates' Courts are Courts of Record and are open courts. They exercise civil as well as criminal jurisdictions.

The Civil Jurisdiction of Magistrates' Courts comprises causes of action in both contract and tort up to \$3,000 (with a few exceptions). The procedure is similar to that of the County Court, except that there is no provision for jurors.

There are many other matters of a civil nature vested in Magistrates' Courts by both Commonwealth Acts (e.g., the Income Tax Act) and by Victorian Acts. The Maintenance Act empowers a Stipendiary Magistrate sitting as a Magistrates' Court to hear and determine complaints for maintenance of children of *de facto* relationships. Under the Family Law Act a Stipendiary Magistrate is able to hear and determine applications other than applications for "principal relief" (i.e., dissolution, or nullity, or declarations as to the validity of marriages).

The criminal jurisdiction includes the hearing of summary offences and indictable offences triable summarily, as well as the conducting of preliminary examinations in regard to indictable offences.

Summary offences, the largest part of the criminal jurisdiction, comprise all offences under any Act, or breaches of any Act, which in the statute are stated to be prosecuted summarily or before justices, etc., or where no means of enforcement are provided in any Act. Some may be heard only by Stipendiary Magistrates. In addition, Commonwealth laws have vested Federal jurisdiction in Magistrates' Courts constituted by Stipendiary Magistrates to hear offences against Commonwealth Acts and also conduct preliminary examinations for indictable offences against Commonwealth laws. Some summary offences, such as parking and some traffic offences, may be dealt with by what is called "alternative procedure" which empowers a Stipendiary Magistrate in certain circumstances to deal with them in chambers on an affidavit of evidence without the appearance of the informant if the defendant does not elect to appear.

With regard to indictable offences triable summarily, Magistrates' Courts have been given power to deal summarily with a number of the less serious indictable offences including theft and kindred offences up to a value of \$10,000 and some charges of wounding and assault. The procedure laid down ensures that the defendant shall not be deprived of the right to trial by jury if he so desires, as the Court cannot deal with them summarily unless he consents. The preliminary examination of an indictable offence may be held either in the Magistrates' Court or by one or more Justices who may conduct the examination at any place although usually in a courtroom. It is not deemed to be an open court, and publication of the proceedings may be prohibited if it is considered that publication would prejudice the trial. All the evidence is put into writing or recorded and if the Justice is satisfied of a strong or probable presumption of guilt he directs the

defendant to be tried in either the Supreme or County Court, and may commit him to gaol or release him on bail. If the Justice is not so satisfied the defendant is discharged. Children's Courts (see pages 660-3) hear most offences by juveniles under the age of 17 years.

Numerous statutes vest other powers in Magistrates' Courts or Stipendiary Magistrates, among them being the power to make ejectment orders and the granting of licences.

The following tables show particulars of Magistrates' Courts business. In any comparison of the figures with those relating to earlier Victorian figures, other States, or other countries, consideration should be given to the following factors.

Law in the places compared should be substantially the same, and it should be administered with equal strictness. Proper allowances should also be made for changes in the law, for differences in the age and sex composition of the population, and for changes which may occur over time in the population structure. Changes in the civil jurisdiction of the courts and in the number of cases settled out of court also result in fluctuations in court business.

#### VICTORIA—MAGISTRATES' COURTS: CASES OF A CIVIL NATURE

Type of case	1977	1978	1979	1980	1981
Civil cases—					
Number heard	133,919	133,204	139,812	141,970	186,747
Other cases—					
Garnishee	435	392	546	553	332
Fraud orders	3,686	3,748	4,233	4,647	3,433
Maintenance orders	7,427	7,416	8,629	7,573	5,469
Licences and certificates	28,092	27,259	28,348	29,396	22,137
Show cause summonses	2,083	1,472	673	304	348
Landlord and tenant	2,227	2,241	2,303	2,348	2,332
Miscellaneous	23,678	22,165	20,036	15,174	27,609

The following tables have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS).

#### VICTORIA—MAGISTRATES' COURTS: TOTAL OFFENCES IN SPECIFIC CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING IN A CONVICTION OR DISMISSAL ETC.: RESULT OF HEARING, 1979

Crime subdivision	Fined	Imprisoned	Other court decisions	Total convictions	Total dismissals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	2,220	744	1,304	4,268	3,257
Sexual assaults and offences	157	63	343	563	94
Other offences against the person	n.p.	n.p.	8	16	6
Robbery and blackmail	n.p.	n.p.	5	10	24
Burglary	613	1,348	1,688	3,649	313
Fraud and deception	2,138	1,815	3,592	7,545	799
Receiving and unlawful possession of stolen goods	827	285	561	1,673	861
Other theft	6,110	1,882	6,133	14,125	1,722
Property damage and environmental offences	1,402	125	520	2,047	433
Offences against government security, etc., and justice procedures	2,193	346	514	3,053	843
Prostitution and related offences	1,196	37	51	1,284	104
Offensive behaviour	3,620	172	531	4,323	543
Unlawful possession of weapons	1,222	125	246	1,593	444
Other offences against good order	2,380	271	680	3,331	1,002
Drug offences	2,111	290	1,096	3,497	1,023

**VICTORIA—MAGISTRATES' COURTS: TOTAL NUMBER OF APPEARANCES  
IN COURTS OF PERSONS WHO WERE CONVICTED OR DISMISSED ETC.:  
RESULT OF HEARING, RECORDED BY MOST SERIOUS OFFENCE IN SPECIFIC  
CRIME SUBDIVISIONS, 1979**

Crime subdivision	Fined	Imprisoned	Other court decisions	Total convic- tions	Total dismissals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	1,314	330	769	2,413	305
Sexual assaults and offences	115	32	190	337	27
Other offences against the person	6	n.p.	n.p.	11	n.p.
Robbery and blackmail	n.p.	n.p.	n.p.	5	6
Burglary	434	528	745	1,707	53
Fraud and deception	790	180	613	1,583	106
Receiving and unlawful possession of stolen goods	476	111	310	897	137
Other theft	4,541	639	3,301	8,481	469
Property damage and environmental offences	867	41	234	1,142	48
Offences against government security, etc., and justice procedures	581	109	173	863	40
Prostitution and related offences	1,163	33	45	1,241	26
Offensive behaviour	2,856	89	356	3,301	87
Unlawful possession of weapons	729	49	132	910	61
Other offences against good order	1,864	133	396	2,393	118
Drug offences	1,280	128	608	2,016	109

*Children's Court*

The Children's Court, which began in Victoria in 1906, is held in the Melbourne metropolitan area and in various country towns and cities. Beyond the Melbourne metropolitan area, the Children's Court is usually held on the same day as the Magistrates' Court and presided over by the same stipendiary magistrate, but honorary Children's Court magistrates are appointed for some Children's Courts.

In the Melbourne metropolitan area, four stipendiary Children's Court magistrates are appointed and they visit thirteen Children's Courts at regular intervals; all metropolitan Children's Courts are administered from the Melbourne Children's Court.

The Children's Court's jurisdiction is normally restricted to children under the age of 17 years. A child may be brought before the Court for an offence committed before his seventeenth birthday provided the appearance takes place before his eighteenth birthday. Two types of cases come before the Court, namely, offences and applications under the Community Welfare Services Act. The Court has no jurisdiction in civil matters, adoption, maintenance, or custody.

The Children's Court follows the practice and procedure of Magistrates' Courts, with two main exceptions. The first of these exceptions is that the Court is not bound to observe legal formalities and ceremonies. The second is that the Court is always closed to the public and the media is forbidden from reporting any proceedings. The Court has considerably wider powers than Magistrates' Courts and may deal with any offence except homicide. The child (or the parent if the child is under the age of 15 years) must always consent to the Court dealing with an indictable offence in a summary manner, otherwise the matter would be tried by a jury in a higher court. Consent is given in almost all cases.

The police and certain others may apply to the Children's Court for an order declaring a child "in need of care". The Community Welfare Services Act lists the categories which make such an application possible.

The *Children's Court Act 1973* states that the Court shall first have regard to the welfare of the child. The Court attempts to reform and rehabilitate offenders. A common method of dealing with a child is by releasing him on probation for a period not exceeding three years. Most terms of probation are for twelve months. A probation officer is expected to assist and guide the child during that period. If probation is not considered necessary a case may be adjourned without supervision for a specified period not exceeding two years.

Instead of releasing a child on probation, a Court may impose a supervision order. This is similar to a probation order with the important distinction that the supervising probation officer is able to impose reasonable conditions and directions on the parents or guardians, as well as on the child.

Probation officers also assist the Court by furnishing reports on children's backgrounds. Stipendiary probation officers are employed by the Community Welfare Services Department and usually handle those cases requiring special expertise. Their ranks are augmented by a large number of honorary probation officers throughout Victoria. Some honorary probation officers are employed by the churches.

An important provision provided for in the *Children's Court Act 1973* empowers a Court to release a child on a good behaviour bond or to impose a monetary penalty up to a maximum of \$500 without necessarily recording a conviction against the child.

As a last resort, children under the age of 15 years may be admitted to the care of the Community Welfare Services Department and those aged 15 years or over may be detained in a youth training centre for a specified period not exceeding two years or, if more than one charge is proved, not more than three years in all. The *Children's Court Act 1973* empowers a Court to fix an aggregate period of detention rather than a specific sentence on each separate charge.

The *Community Welfare Services Act 1970* has vested in the Youth Parole Board the authority to parole children who are serving periods of detention.

Allied to the Children's Court is the Children's Court Clinic which is staffed by a team of psychiatrists, psychologists, and social workers. The Clinic undertakes detailed investigations of problem cases referred to it by the Court and makes recommendations on its findings. In some cases the Clinic will offer counsel to parents and children after a court appearance.

The following tables show particulars of Children's Court business. In any comparison of the figures with those relating to earlier Victorian figures, other States, or other countries, consideration should be given to the following factors.

Law in the places compared should be substantially the same, and it should be administered with equal strictness. Proper allowances should also be made for changes in the law, for differences in the age and sex composition of the population, and for changes which may occur over time in the population structure.

The following tables have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS).

**VICTORIA—CHILDREN'S COURT: TOTAL OFFENCES IN SPECIFIC  
CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED  
RESULTING IN A CONVICTION OR A DISMISSAL, ETC.:  
RESULT OF HEARING, 1979**

Crime subdivision	Fined	To control of Social Welfare Department	Other court decisions	Total convic- tions	Total dis- missals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	130	386	221	737	303
Sexual assaults and offences	3	111	78	192	28
Other offences against the person	n.p.	9	n.p.	15	4
Robbery and blackmail	5	50	7	62	13
Burglary	129	3,416	827	4,372	114
Fraud and deception	37	167	94	298	12
Receiving and unlawful possession of stolen goods	23	178	95	296	46
Other theft	398	5,604	1,904	7,906	293
Property damage and environmental offences	99	359	203	661	131
Offences against government security, etc., and justice procedures	38	150	35	223	18

VICTORIA—CHILDREN'S COURT: TOTAL OFFENCES IN SPECIFIC  
CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED  
RESULTING IN A CONVICTION OR A DISMISSAL, ETC.:  
RESULT OF HEARING, 1979—*continued*

Crime subdivision	Fined	To control of Social Welfare Department	Other court decisions	Total convic- tions	Total dis- missals etc.
Prostitution and related offences	—	n.p.	n.p.	3	—
Offensive behaviour	101	63	73	237	32
Unlawful possession of weapons	32	80	68	180	28
Other offences against good order	96	387	203	686	114
Drug offences	20	13	17	50	7

VICTORIA—CHILDREN'S COURT: TOTAL NUMBER OF APPEARANCES  
IN COURTS OF PERSONS WHO WERE CONVICTED OR DISMISSED ETC.:  
RESULT OF HEARING, RECORDED BY MOST SERIOUS OFFENCE IN  
SPECIFIC CRIME SUBDIVISIONS, 1979

Crime subdivision	Fined	To control of Social Welfare Department	Other court decisions	Total convic- tions	Total dis- missals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	73	143	103	319	23
Sexual assaults and offences	n.p.	52	n.p.	92	5
Other offences against the person	—	3	—	3	—
Robbery and blackmail	n.p.	25	n.p.	33	4
Burglary	63	997	345	1,405	33
Fraud and deception	12	28	23	63	n.p.
Receiving and unlawful possession of stolen goods	16	66	51	133	7
Other theft	198	1,358	726	2,282	61
Property damage and environmental offences	52	93	78	223	9
Offences against government security, etc., and justice procedures	5	72	9	86	n.p.
Prostitution and related offences	—	n.p.	n.p.	n.p.	—
Offensive behaviour	71	30	55	156	7
Unlawful possession of weapons	19	14	35	68	3
Other offences	—	—	—	—	—
against good order	49	98	102	249	22
Drug offences	12	3	9	24	—

*Police warnings for juvenile first offenders*

A system for warning juvenile first offenders operates in Victoria to prevent many children from having to make an appearance in a Children's Court. Police are instructed not to proceed against children who have committed minor offences, if an alternative course of action is available. Warnings are given in the presence of parents or guardians who are told of the probable underlying reason for the offence, and both the offender and his parents or guardian are expected to ensure the avoidance of a repetition of the offence.

Offenders are not normally given a second chance and divisional officers believe that only a very small proportion of those warned offend again. The reporting member may continue to take an interest in the child, and in most cases co-operation is received from both the offender and his parents or guardians.

The following table has been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS).

**VICTORIA—POLICE WARNINGS: TOTAL OFFENCES IN  
SPECIFIC SUBDIVISIONS: AGE OF OFFENDER, 1979**

Crime subdivision	Age last birthday (years)						Total
	9 and under	10 to 12	13 to 14	15	16	17 and over	
Homicide	—	—	—	—	—	—	—
Assaults (excluding sexual assaults)	—	12	55	44	62	78	251
Sexual assaults and offences	—	24	45	44	49	21	183
Other offences against the person	—	—	n.p.	n.p.	—	—	3
Robbery and blackmail	—	n.p.	6	n.p.	8	—	17
Burglary	101	454	707	444	316	113	2,135
Fraud and deception	n.p.	n.p.	56	62	96	29	256
Receiving and unlawful possession of stolen goods	5	24	117	55	73	51	325
Other theft	108	1,211	2,553	1,567	1,321	694	7,454
Property damage and environmental offences	34	143	141	69	115	90	592
Offences against government security, etc., and justice procedures	—	6	3	10	20	24	63
Prostitution and related offences	—	—	—	—	—	—	—
Offensive behaviour	—	n.p.	n.p.	29	42	39	125
Unlawful possession of weapons	—	17	70	51	72	44	254
Other offences against good order	23	106	168	132	167	125	721
Drug offences	—	—	n.p.	n.p.	7	17	31

### *Inquests*

A coroner has jurisdiction to hold an inquest concerning the manner of death of any person who is slain or drowned or who dies suddenly or in prison or while detained in any mental hospital and whose body is lying dead within the district in which such coroner has jurisdiction, and subject to certain conditions, to hold an inquest into the cause and origin of any fire whereby property has been destroyed or damaged.

A 1970 amendment to the *Coroners Act* 1958 made provision for the holding of an inquest where a coroner believes that a death has occurred in or near the area of his jurisdiction and that the body cannot be recovered or has been destroyed. The coroner must first report the facts to the Attorney-General who may direct the inquest to be held.

A coroner's duties in relation to this are regulated by the Coroners' Acts and there are special provisions relating to inquests in other Acts, such as the Community Welfare Services Act and the Registration of Births, Deaths, and Marriages Act. Coroners and deputy coroners are appointed by the Governor in Council, every stipendiary magistrate being appointed a coroner for the State of Victoria. Deputy coroners have jurisdiction in the districts for which they have been appointed. In addition, a justice of the peace has jurisdiction to hold an inquest, but only if requested to do so by a police officer in charge of a station, or by a coroner.

In the majority of cases a coroner acts alone in holding an inquest, but in certain cases a jury is empanelled. This is done when:

- (1) The coroner considers it desirable;
- (2) in any specified case a Law Officer so directs; or
- (3) it is expressly provided in any Act that an inquest shall be taken with jurors.

It is optional for the coroner to have a jury when:

- (1) A relative of the deceased person so requests;
- (2) any person knowing the circumstances leading up to the death of the deceased person so requests; or
- (3) any member of the Victoria Police so requests.

If the inquest is held without jurors, the coroner must set down his reasons in writing and transmit those reasons to a Law Officer.

Amending legislation in 1953 provided that the viewing of the body is not essential and is necessary only when the coroner or jury deem it advisable.

### VICTORIA—MELBOURNE CORONER'S COURT: INQUESTS HELD

Year	Number of inquests held
1977	1,497
1978	1,361
1979	1,445
1980	1,278
1981	1,450

#### *Committals by coroners*

When a person is arrested and charged before a justice or court with murder, manslaughter, arson, infanticide, or culpable driving, those proceedings are adjourned from time to time pending the holding of the inquest. If the inquest results in a finding against that person of murder, manslaughter, arson, infanticide, or culpable driving, the coroner issues a warrant committing him for trial, the other proceedings being then withdrawn.

### VICTORIA—COMMITTALS BY CORONERS

Year	Murder, Manslaughter, Infanticide, and Arson		Culpable Driving
	Males	Females	Persons(a)
1977	30	11	36
1978	37	6	34
1979	35	7	39
1980	45	4	40
1981	24	n.p.	27

(a) Males and females not available separately.

### Legal profession

#### *Introduction*

Until 1891, the legal profession in Victoria was divided into two separate branches—barristers and solicitors—as it still is in England and New South Wales. Solicitors prepared wills, contracts, mortgages, and transfers of land, and generally instituted legal proceedings. Barristers appeared for litigants and accused persons in court and wrote opinions on legal questions in chambers. A litigant or accused person could not approach a barrister directly, but only through a solicitor who instructed the barrister for him.

In 1891, the Victorian Parliament amalgamated the two branches, and since then every Victorian lawyer has been admitted to practice as a barrister *and* solicitor, and is entitled to do the work of both. Despite this compulsory legal fusion most lawyers voluntarily continued the segregation of the profession into two separate branches as before, although a few practitioners took advantage of their legal rights. These latter practitioners have their successors today, although most Victorian lawyers, on admission to practice, still choose to make their career in one or other of the two branches—not in both.

#### *Victorian Bar*

The basic traditions of the Victorian Bar came from England, although the early influence of prominent Irish barristers remains strong. Since 1891, Victorian legislation has provided that every admitted practitioner may practise as a barrister and solicitor. Admission to practice requires a law school qualification and either service under articles or completion of the Leo Cussen Institute for Continuing Legal Education's professional practice course.

Most Victorian practitioners choose to specialise either as barristers or as solicitors. The Victorian Bar, an unincorporated association formed in 1900, consists of those who sign the Victorian Bar roll after undertaking to practise exclusively as barristers. In August 1982, there were 768 members of the Bar, including 49 women, in full-time active practice. Six had chambers in Ballarat, Bendigo, or Geelong. Barristers appointed to the Bench (that is, promoted to a judgeship) remain members of the Bar.

Barristers spend the first nine months reading as a pupil in the chambers of an experienced barrister of at least ten years standing, receiving practical instruction and guidance in the work and ethics of a barrister. After three months of reading, the pupil may take work of his or her own. During the first three months of reading, the pupil must attend a three month course of training in legal theory and skills of particular application to the profession of advocacy and attend lectures by senior barristers on ethics and workmanship. After reading, the barrister takes a tenancy of chambers provided by the Bar-owned company in premises close to the main courts. New barristers usually pay lower rents than more senior barristers.

Solicitors' clients are members of the public. Barristers are engaged by solicitors on behalf of the solicitors' clients. Barristers specialise in conducting and appearing in civil litigation and criminal trials, in giving opinions on legal questions, and in preparing documents involving difficulties of law.

Barristers wear wigs and gowns in the higher courts. Besides appearing in courts, barristers frequently appear before specialised tribunals dealing with issues of economics and public interest such as trade practices, prices justification, industrial arbitration, the environment, and town planning.

Senior barristers may be appointed Queen's Counsel, who specialise in cases requiring more than one counsel and appear with a junior. There were 70 Queen's Counsel practising at the Victorian Bar in August 1982.

In August 1982, nine barristers' clerks acted for varying numbers of practising barristers, ranging from about 20 to about 125 in number. Clerks and their staff inform solicitors of the availability of barristers, negotiate fees, render accounts, and provide telephone and delivery services for the barristers for whom they act. Barristers pay their clerks a percentage of fees received.

The Victorian Bar Council represents the Bar and administers its affairs. Its rulings on ethics and professional conduct bind all members. Its eighteen members are elected each October. Three members are of less than six years standing as barristers and another four of less than fifteen years standing. The Bar Council elects its chairman and other officers, and its affairs are administered by a full-time executive officer. Under the Bar Council, three administrative committees of members of the Bar Council are empowered to make recommendations to the Bar Council or to make decisions on its behalf—the Executive, Ethics, and Law Reform Committees.

A Young Barristers' Committee, elected by barristers of less than six years standing, investigates, and makes recommendations to the Bar Council on questions concerning young barristers and in particular those involving practice in Magistrates' Courts.

The Victorian Bar, often acting jointly with the Law Institute of Victoria, helps to supervise legal education and training, to contribute to the reform of the law, and the practices and procedures of courts and tribunals. It has, or has representatives on, about sixty committees doing such work. The Victorian Bar is a member of the Law Council of Australia, which represents the whole Australian legal profession, and of the Australian Bar Association which represents barristers.

#### *Law Institute of Victoria*

The Law Institute of Victoria is the professional body of those members of the legal profession who practise as solicitors in Victoria. It was established in 1859 and incorporated by an Act of the Victorian Parliament in 1917. The relevant statutory provisions are now included as Part III of the *Legal Profession Practice Act* 1958. All persons admitted to practise as a barrister and solicitor of the Supreme Court of Victoria are eligible for membership of the Law Institute of Victoria, whether they are practising as solicitors or not.

The Institute is governed by a Council consisting of the Attorney-General, the president of each of the nine Country Law Associations, one member appointed by each of the five suburban law associations, and eighteen members elected either as suburban council members or general council members. The Council operates through standing committees and committees appointed to deal with specific matters which after detailed consideration submit recommendations to the Council. The Institute is also represented on a number of outside bodies associated with the law.



Apart from the services which the Institute provides for its members, it also performs important public duties. It has a statutory obligation to control solicitors' trust accounts, to issue annual practising certificates, to administer the Solicitors' Guarantee Fund, and to consider claims for compensation out of the Fund by persons who allege they have suffered pecuniary loss as a result of a defalcation committed by a solicitor. The Institute also prescribes standards of professional conduct and insists on all solicitors maintaining a high ethical standard, investigating all complaints concerning the conduct of a solicitor, and in appropriate cases instituting disciplinary action. The Institute endeavours to maintain and improve the public image of the legal profession and to educate the public about the services which a solicitor can provide and the occasions on which it is desirable to consult a solicitor. It is active in law reform. Committees meet regularly to consider anomalies or omissions in the law or practice, and the Council makes representations to the Attorney-General or other appropriate authority for the amendment of the law.

*Disciplinary procedures for members of the legal profession*

Since January 1979, the discipline of the legal profession has been overseen by two tribunals, which for the first time include non-lawyers. The tribunals were established by the *Legal Profession Practice (Solicitor's Disciplinary Tribunal) Act 1978* and the *Legal Profession Practice (Discipline) Act 1978*.

The Solicitor's Disciplinary Tribunal is appointed from a panel consisting of current members of the Council of the Law Institute; solicitors appointed by the Council; and three persons, who are not legal practitioners, appointed in the public interest by the Attorney-General. The function of the Tribunal is to consider complaints of misconduct against solicitors. "Misconduct" includes various acts or omissions by a solicitor such as charging grossly excessive costs; making untrue statements; failure in performing any work in connection with a solicitor's practice which constitutes a gross breach of duty to a client or the court; failure to lodge a report of the annual audit of trust accounts not later than 3 months after the statutory time; and wilful or reckless non-compliance with the rules and regulations governing the compulsory indemnity insurance scheme for solicitors.

Investigations of alleged misconduct can be initiated by the Secretary of the Institute or by any person writing to the Secretary of the Law Institute. After an initial investigation and consideration of any explanation made by a solicitor, the Secretary may refer the matter to the Tribunal. Provision is made for three forms of hearings: for a preliminary hearing, the President of the Institute assigns one person; for a summary hearing, three persons; and for a full hearing, five persons one of whom is a lay member, are assigned. The Tribunal may impose penalties such as fines of up to \$5,000 or the cancellation, suspension, or limiting of practising certificates.

The discipline of barristers is the responsibility of the Barristers' Disciplinary Tribunal or Bar Tribunal. The Tribunal, appointed by the Chief Justice, comprises a judge, or former judge of the Supreme Court as chairman; three barristers—two being Queen's Counsel and one being junior Counsel; and a person, who is not a legal practitioner, nominated by the Attorney-General. Complaints against barristers are referred initially by the chairman of the Victorian Bar Council to the Council's Bar Ethics Committee. After preliminary investigation of a complaint, the Ethics Committee may decide to take no further action, deal with the matter summarily, or lay a charge against the barrister before the Barristers' Disciplinary Tribunal.

Summary hearings by the Ethics Committee are designed to deal with misconduct for which a fine not exceeding \$1,000, or suspension for up to 3 months, would be appropriate. However, the Committee may decide to lay a charge before the Tribunal, rather than deal with the matter summarily. A barrister is entitled to have a matter dealt with by the Tribunal if he objects to a summary hearing by the Committee.

Hearings by the Tribunal deal with the most serious cases of misconduct. The Tribunal has the power to impose a fine not exceeding \$5,000; to suspend the barrister (without limit as to time); to direct that the barrister's name be struck off the Bar Roll, or the roll of practitioners kept by the Supreme Court; and to order that the expenses incurred by the Tribunal be paid. A party aggrieved by an order of the Tribunal may appeal against the order to the Full Court of the Supreme Court. Hearings by the Tribunal will be held in public unless the Tribunal considers it is in the interests of justice that the hearing or part of it should be held in private.

A lay observer has been appointed to examine and report on the manner in which the two tribunals handle complaints. Annual reports are made to the Law Institute of Victoria or the Victorian Bar Council and to the Attorney-General who presents the reports to Parliament. The lay observer, who is appointed for three years, has the power to require the various disciplinary bodies to provide him with information and to make reports or recommendations.

### **Professional committees and agencies**

#### *Chief Justice's Law Reform Committee*

This Committee was founded in 1944 by the then Chief Justice to consider making recommendations to the Victorian Parliament for the reform of the law on matters of a non-contentious nature, including the abolition of obsolete and useless rules. Since then, it has made some one hundred such recommendations, many of which have been given effect to in legislation.

The Committee consists of members of the judiciary, from both the Supreme and County Courts, the Bar, solicitors, and the law faculties of the University of Melbourne and Monash University. The usual number of members is about twenty, who meet in full committee two or three times each year. Much of the work of the Committee is done by the sub-committees comprising members of each branch of the legal profession, who are not necessarily members of the full committee, but who have some expertise in the area under investigation. The reports of the sub-committees are then considered by the full committee; if the Committee considers that a change in the law is desirable, a recommendation is forwarded to the appropriate Victorian Government department.

Suggestions of matters to be considered by the Committee often emanate from the Attorney-General, but the Committee does consider matters suggested by other sources, provided any reforms proposed are likely to be politically non-contentious and the Committee has the resources to undertake the particular inquiry. All the work done by members of the Committee is voluntary.

An example of legislation resulting from a recommendation of the Committee is the *Crimes (Theft) Act 1973*, which replaced many outdated and technical rules of the law of larceny with a modern law of theft. Other legislation has occurred in areas such as evidence, torts, and wills.

#### *Council of Law Reporting in Victoria*

The Council of Law Reporting in Victoria is a body corporate established by the *Council of Law Reporting in Victoria Act 1967*. It consists of a judge of the Supreme Court appointed by the Chief Justice as chairman, the Attorney-General, the Solicitor-General, the Librarian of the Supreme Court, two members appointed by the Victorian Bar Council, and two members appointed by the Law Institute of Victoria. The Council has a registrar and an honorary secretary.

The Council has arranged for the publication by a publishing company of the Victorian reports which contain decisions of the Supreme Court of Victoria.

Under the Act, it is not lawful to publish a new series of reports of judicial decisions of any court in Victoria except with the consent of the Council. The Council has given limited consents for the publication of restricted categories of decisions in certain specialised reports with an Australia-wide circulation.

#### *Council of Legal Education*

The Council of Legal Education was established by an Act of the Victorian Parliament in 1903 and is presently governed by the provisions of the *Legal Profession Practice Act 1958* as amended. The Council consists of the judges of the Supreme Court, the Attorney-General, the Solicitor-General, and representatives of the law faculties of the University of Melbourne and Monash University, the Law Institute of Victoria, and the Victorian Bar Council. The Chief Justice of Victoria is the president of the Council.

The functions of the Council are to make and alter rules:

(1) Relating to the courses of study and examination and service of articles and other qualifications of candidates to practise as barristers and solicitors and for the admission of such candidates to practise; and

(2) for the admission to practise in Victoria of persons admitted to practise in any State or Territory of the Commonwealth of Australia or in England, Scotland, Northern Ireland, the Republic of Ireland, or any part of Her Majesty's Dominions or the British Commonwealth of Nations.

The rules of the Council are included in the statutory rules published by the Victorian Government Printer.

#### *Law Reform Commissioner*

The office of Law Reform Commissioner was established by an Act of the Victorian Parliament in 1973. The functions of the Commissioner are to advise the Attorney-General on the reform of the law in Victoria, including in particular: (1) The simplification and modernisation of the law, having regard to the needs of the community; (2) making the administration of justice generally more economical and efficient; (3) the elimination of anomalies, defects, and anachronisms; (4) the repeal of obsolete or unnecessary enactments; (5) the consolidation, codification, and revision of the law; and (6) the investigation and reporting to the Attorney-General on any matter relating to law reform referred to him by the Attorney-General.

Under the Act, provision is made for the appointment of a Law Reform Advisory Council of five members. The Council consists of representatives of the Law Institute of Victoria, the Victorian Bar Council, academic lawyers, and the public.

The following table shows details of the reports issued by the Law Reform Commissioner during the period from January 1976 to January 1982:

#### VICTORIA—LAW REFORM COMMISSIONER: REPORTS ISSUED, JANUARY 1976 TO JANUARY 1982

Date of report	Title of report	Matters on which legislation was recommended
January 1976	Report No. 4—Delays in Supreme Court Actions	Changes in the Supreme Court Act and Rules directed to promoting earlier settlements of actions, and the reduction of delays in procedures for bringing actions to trial.
June 1976	Report No. 5—Rape Prosecutions (Court Procedures and Evidence)	Reforms in court procedures and rules of evidence affecting rape trials.
December 1976	Report No. 6—Spouse Witnesses (Competence and Compellability)	Compellability of spouse witnesses to give evidence.
June 1978	Report No. 7—Innocent Misrepresentation	Extension of the remedies available where a contract is induced by innocent or negligent misrepresentation.
June 1979	Report No. 8—Pre-Incorporation Contracts	Ratification of contracts made on behalf of a company prior to incorporation.
October 1980	Report No. 9—Duress, Necessity and Coercion	Reform and statutory reformulation of the law relating to Duress and Necessity as defences in the criminal law; repeal of the law relating to coercion.
December 1980	Report No. 10—Delivery of Deeds	Reforms of the law relating to the delivery of deeds.
June 1981	Report No. 11—Unsworn Statements in Criminal Trials	Limited right of both judge and prosecution to comment on an accused's making an unsworn statement; amendments to section 399 of the <i>Crimes Act</i> 1958 and section 25 of the <i>Evidence Act</i> 1958.
January 1982	Report No. 12—Provocation and Diminished Responsibility as Defences to Murder	Reform of law relating to provocation and introduction of defence of diminished responsibility in prosecutions for murder.

*Australian Institute of Criminology*

The Australian Institute of Criminology was established in 1973 under the provisions of the *Criminology Research Act 1971-73*. As a statutory organisation its main functions are to undertake research and training activities in regard to crime prevention and correction requirements on both national and State government levels. For such purposes its Board of Management is composed of nominated members from the Commonwealth Government and State Governments. It publishes research reports and proceedings on training activities which are distributed throughout Australia and overseas.

*Criminology Research Council*

This Council, established under the provisions of the *Criminology Research Act 1971-73*, is a grant giving body specialising in research in the areas of crime prevention and correction. It is funded partly by the Commonwealth Government and partly by the State Governments, the contributions of the latter being determined on a pro-rata population basis. The Australian Institute of Criminology provides the Council with administrative and secretarial services.

*Commonwealth Legal Aid Council*

The Commonwealth Legal Aid Council established pursuant to the *Commonwealth Legal Aid Act 1977* as amended, has taken over the research function previously conducted by the Commonwealth Legal Aid Commission which was abolished by the same legislation. The Council is required to ascertain and keep under review the need for legal assistance in Australia, in respect of Commonwealth matters and make recommendations to the Attorney-General as to the most effective, economical, and desirable means of satisfying that need. The Council is also required to make recommendations to the Attorney-General concerning the provision by the Commonwealth Government of financial assistance in respect of the cost of providing legal assistance and the effectiveness of arrangements for the application of that financial assistance provided by the Commonwealth Government. The Council may also make recommendations to the Attorney-General concerning any other matters relating to the provision of legal assistance, upon his request.

Further reference: Commonwealth Legal Aid Commission, *Victorian Year Book 1981*, p. 699

*Legal Aid Commission of Victoria*

A new system for providing legal aid in Victoria came into operation on 1 September 1981. On that date, the Legal Aid Commission commenced providing legal aid under the *Legal Aid Commission Act 1978*, and the three bodies previously providing legal aid, the Legal Aid Committee, the Australian Legal Aid Office and the Public Solicitor effectively ceased to exist.

The Legal Aid Commission is an independent statutory corporation whose function is to provide legal aid under the Act. Legal Aid is defined as education, advice, or information in or about the law; any legal services that may be provided by a legal practitioner; duty lawyer services; legal advice; and legal assistance. Each of these aspects is in turn defined. This is the first time legal aid has been defined by legislation in Victoria and the definition presents a broader concept of legal aid than was previously understood by the term.

Under the Act, Duty Lawyer Services and legal advice are provided without charge to any person seeking them. However, legal services (legal assistance) may be provided to persons unable to pay ordinary legal costs either without charge or in payment of a contribution towards the Commission's costs of providing the services required.

Under guidelines required by the Act to be prepared by the Commission, a person whose income is less than the applicable poverty lines and does not have assets to the value specified in the guidelines, will receive free legal assistance unless their financial position improves while the assistance is being provided. A person whose income is above the poverty line may or may not be required to pay a contribution; this depends upon their particular financial circumstances and the estimated cost of the provision of the legal services required.

Duty Lawyer Services and legal advice are provided by Commission staff. Legal assistance may be provided by either Commission staff or lawyers in private practice. Applicants may choose who they wish to act for them and normally the Commission will

act on that choice. There is no restriction on the type of legal problem for which legal assistance will be provided. However in certain cases, special consideration will need to be shown before assistance will be provided. A further innovation introduced by the Act is a system under which applicants for legal assistance can obtain reconsideration and reviews of decisions made by the Commission. The Commission comprises nine members, eight of whom are appointed by the Governor in Council. The Director of Legal Aid is an *ex-officio* member.

The Commission has five main sources of funds. They are the Victorian Government; the Commonwealth Government; portion of the interest earned by the investment of solicitors' trust funds; contributions made by assisted persons; and any legal costs awarded by a Court to legally assisted persons.

Further references: Voluntary legal aid, *Victorian Year Book* 1975, pp. 850-1; Legal Aid Committee, 1981, p. 700; Australian Legal Aid Office, 1981, p. 699; Public Solicitor, 1981, p. 705

#### *Leo Cussen Institute for Continuing Legal Education*

The Leo Cussen Institute was established by statute in 1972, as a result of the desire of the University of Melbourne, Monash University, the Victorian Bar Council, and the Law Institute of Victoria to set up "an organization to provide continuing education for legal practitioners in Victoria and to perform certain functions in connection with legal education" (preamble to the Act). The Institute comprises eight members, two appointed by each of the four founding bodies. In addition, a wide range of books are published of interest to practising lawyers.

The initial emphasis of the Institute was upon "continuing education for legal practitioners", and this remains one of its major functions. A wide range of courses, seminars, and lectures are now offered, both in Melbourne and the country, and occasionally in co-operation with other bodies (such as the Law Institute, the Law Council of Australia, and the University Law Schools).

The Institute's statute, however, always envisaged a wider role for it, including the conduct of "courses for training in the law". It seemed appropriate, therefore, that the Institute should be requested to establish the new course of practical training in lieu of one-year articles. A pilot scheme was run in 1974, and the first full year was 1975. A course has been conducted each year since, and there are now about one hundred law graduates enrolled in each course.

Funding for the practical training course is received from the Tertiary Education Commission and from the Solicitors' Guarantee Fund. There are no enrolment fees. The continuing legal education activities of the Institute have generated sufficient income to enable them to be self-funding.

The course of practical training is a full-time course extending over a period of six months and covering all major areas of practice. Although the setting is institutional, every effort is made to match the conditions of actual practice. There is both direct teaching and time spent by students working on their own, carrying out exercises corresponding to what might reasonably be expected of them in practice. Instructors are all drawn from the practising profession. Files of "current matters" are kept, and visits made to government and semi-government offices, courts, registries, and the like.

While courses such as this are comparative newcomers in the field of legal education, they are now conducted in all Australian States (except Western Australia) and in the Australian Capital Territory. Australia is recognised internationally as a pioneer of legal practice courses.

#### *Victoria Law Foundation*

The Victoria Law Foundation was established by the *Legal Profession Practice (Victoria Law Foundation) Act* 1967 and commenced operations in 1969. Its constitution is now to be found in the *Victoria Law Foundation Act* 1978. The members of the Foundation are: the Chief Justice (President), the Attorney-General of Victoria, the Law Reform Commissioner, the President of the Law Institute of Victoria, the Chairman of the Victorian Bar Council, nine other persons appointed by the Governor in Council—three on the nomination of the Attorney-General, three on the nomination of the Law Institute of Victoria, and up to three further persons appointed by co-option by the Foundation. (Of the nine to twelve appointed members, at least six must be lawyers; the remainder may be laymen.)

The activities of the Foundation are to:

- (1) Promote legal research relating to law reform in Victoria;
- (2) promote legal education in Victoria;
- (3) establish, maintain, or improve law libraries in Victoria;
- (4) improve the administration of the law in Victoria;
- (5) promote or undertake, within Victoria, community education in law and the legal system, including programmes in schools;
- (6) communicate to legal practitioners and other persons information on the law and matters related to the law; and
- (7) publish or subsidise the publications of material connected with carrying out the objects of the Foundation.

Further reference: *Victorian Year Book* 1975, pp. 860-1

## ADMINISTRATION OF LAW

### Law in Victoria

#### *Introduction*

Law is the body of rules, whether proceeding from formal enactment or from custom, which a particular State or community recognises as binding on its members or subjects, and enforceable by judicial means. It has been said that "substantially speaking, the modern world acknowledges only two great original systems of law, the Roman and the English".

English law came to Australia with Governor Phillip in 1788, although for many years in a severely attenuated and autocratic form. Immediately before Federation, the law operative in Victoria consisted of the laws enacted by its legislature up to that time; the law of England applicable to the Colony up to 1828; the laws of New South Wales up to 1851; and certain Imperial statutes since 1828 applicable as of paramount force, or adopted by the local legislature since. In addition, the common law applied.

In 1901, the Commonwealth of Australia was established by an Imperial Act under which certain powers were conferred upon the newly created Commonwealth Parliament, and the remaining powers were left to the Parliaments of the six States. Subject to that proviso, State law in Victoria continues as it did before Federation, and Victoria, like the other States, retains some sovereign powers.

#### *Law Department*

##### *Administration*

The political head of the Law Department is the Attorney-General under whose direction and control the Department functions. The administrative functions of the Law Department are the responsibility of the Secretary who is a public servant assisted by a Deputy Secretary and three Directors. The Directors control the Divisions of Policy and Research, Courts Administration, and Administration and Special Services.

The following sections provide particulars of the various functions and responsibilities of branches of the Law Department.

##### *Appeal Costs Board*

This Board was established under the *Appeal Costs Fund Act* 1964. The Act makes provision with respect to the liability for costs of certain litigation, establishes an Appeal Costs Fund to meet such liability, and makes provision for the appointment of an Appeal Costs Board.

The Board consists of three members appointed by the Attorney-General of whom one is appointed as chairman, one nominated by the Council of the Law Institute of Victoria, and one by the Victorian Bar Council. The term of office of the members is three years, but on expiration of the term a member is eligible for re-appointment. The Attorney-General may remove any member at any time.

The Act sets up a Fund for the payment of costs in respect of appeals and aborted hearings, and some adjournments, in such circumstances as are provided for in the Act. Payments are made to cover, for example, the costs incurred in having corrected a wrong decision on a point of law, or the costs incurred in respect of a hearing that is

discontinued through the illness of a judge. No money is paid out of the Fund unless the Board certifies that payment is authorised by the Act. There is no provision in the Act for an appeal from a decision of the Board.

#### *Corporate Affairs Office*

The Corporate Affairs Office, in conjunction with the National Companies and Securities Commission (N.C.S.C.), is responsible for the administration of laws relating to companies and the securities industry. The Corporate Affairs Office is responsible for the incorporation of companies, the examination and registration of takeover documents and prospectuses, and for conducting investigations. In relation to the securities industry, the Corporate Affairs Office licenses operators in the industry and conducts investigations.

On 22 December 1978, the Commonwealth and the States agreed to the Co-operative Companies and Securities Scheme which would secure uniformity of law and administration in relation to companies and the securities industry. The Commonwealth Government established the N.C.S.C. which formally assumed responsibility for laws relating to the securities industry and company takeovers on 1 July 1981. A uniform companies Code came into operation on 1 July 1982. Under the Scheme, the N.C.S.C. is responsible for the overall administration of the Scheme, subject to the approval of the Ministerial Council for Companies and Securities. Existing State and Territorial administrations act as delegates of the N.C.S.C. in their respective jurisdictions.

The Companies Auditors and Liquidators Disciplinary Board was established by the *Companies (Administration) Act 1981*. The Board is responsible for the discipline of registered company auditors and liquidators.

The Office is also responsible for the administration of the *Business Names Act 1962*. In that capacity, the Office registers business names. Legislation relating to business names does not come within the Co-operative Companies and Securities Scheme.

#### *Court Reporting Branch*

The Court Reporting Branch produces, as required, transcripts of proceedings in courts of all jurisdictions throughout Victoria.

#### *Crown Solicitor's Office*

The Crown Solicitor is the solicitor to the Government of the State of Victoria. He provides legal services covering most aspects of the law including the conduct of both prosecutions and civil litigation, the provision of conveyancing services, and the furnishing of legal advice.

The more important of his functions include the preparation for trial of each criminal case in respect of which a presentment is to be filed for an offence against a law of Victoria and he furnishes the Attorney-General, in whose name presentments are made, with legal advice on various matters arising out of prosecutions.

The Crown Solicitor also acts for Ministers of the Crown in civil actions brought by or against them arising out of the performance of their ministerial duties, and in civil proceedings involving the Crown in right of the State of Victoria, some of the statutory authorities and members thereof, and, generally, in actions involving servants or agents of the Crown arising out of the performance of their duties as such. He conducts prosecutions in Magistrates' Courts on behalf of officers of government departments whose responsibility it is to prosecute for breaches of provisions of Acts of Parliament and Regulations made thereunder.

The Crown Solicitor provides conveyancing services in matters which involve either the acquisition or disposal of interests in land by Ministers of the Crown, government departments and some statutory authorities, in addition to such advisory and drafting services as are involved in the preparation and execution of agreements in which the State of Victoria, Ministers of the Crown, some statutory authorities, and Crown servants are parties.

#### *Discharged Servicemen's Employment Board*

Established by section 5 of the *Discharged Servicemen's Preference Act 1943*, this Board has three main functions:

(1) It assists discharged servicemen to find employment and advises the Victorian Government on employment opportunities and the incidence of unemployment among discharged servicemen;

(2) it is required to examine and report to the Victorian Government on alleged contraventions of the Preference Act by which employers are required to give preference in placement, re-instatement, and retention in employment of Victorian discharged servicemen who served in a theatre of war and who are clearly suitable and competent for the particular position; and

(3) it provides a business advisory service in Victoria for any person who has served in the Australian or Allied military forces, provides a business investigation service for discharged servicemen in Victoria, and employs qualified accountants for these services, which are free of charge.

#### *Parliamentary Counsel's Office*

The Parliamentary Counsel's Office originated in Victoria in 1879. The primary work of the Office is to prepare legislation for the Victorian Government. The volume of legislation in Victoria has consistently increased over the last century. The range of subjects upon which legislation is sought has also consistently increased, partly because of developing technology and partly because the Victorian Parliament continually aims at updated and more sophisticated social objectives. The Office may also be called upon to advise the Victorian Government on a wide range of constitutional and parliamentary matters.

Apart from the work done for the Victorian Government, it is the tradition in Victoria that Parliamentary Counsel should be available to assist private members of any political party who wish to promote legislation. Parliamentary Counsel are also available to advise ministers and government instrumentalities on the validity of subordinate legislation that it is proposed to promulgate. They examine and report to the Constitutional and Legal Affairs Committee of the Parliament on the validity and form of all statutory rules.

The Office is responsible for the preparation of the annual volumes of statutes and statutory rules and for the preparation of the various tables and indices of the Acts and statutory rules that are published by the Victorian Government. In recent times, Parliamentary Counsel have been actively engaged in the preparation of uniform legislation and the negotiation of agreements between the different levels of government in Australia.

#### *Patriotic Funds Council of Victoria*

This Council is established and empowered by the *Patriotic Funds Act* 1958 to administer the Act and to regulate fund raising and exercise supervisory control over Victorian patriotic funds, i.e., funds for any purpose in connection with any proclaimed war. These funds (approximately 718 in number with net assets exceeding \$19m and annual income and expenditure of more than \$9m) are used principally to provide welfare assistance, aged persons homes, and clubrooms for the benefit of ex-service persons and their dependants.

The main functions of the Council are to:

- (1) Sanction the establishment of all patriotic funds in Victoria;
- (2) regulate and control fund raising;
- (3) assist and control the trustees and officers of each patriotic fund;
- (4) obtain and examine audited statements each year to ensure that funds are properly administered and used in accordance with the objectives; and
- (5) advise the Victorian Government on legislation and policy relating to patriotic funds.

The Council is also required by the *Anzac Day Act* 1960 to recommend the method of distribution of the Anzac Day Proceeds Fund which comprises money raised each year from sporting functions held on Anzac Day.

#### *Registrar-General and Registrar of Titles*

The Registrar-General registers memorials of deeds dealing with land alienated by the Crown before 2 October 1862 under the General Law, and which has not yet been converted to the Torrens System. The Registrar-General's Office is also the repository of a wide range of documents requiring registration under various Acts of the Victorian Parliament, e.g., bills of sale, liens on crops or wool, stock mortgages, and assignments of book debts, which require registration under the provisions of the *Instruments Act* 1958.

The Registrar-General also holds the office of Registrar of Titles. In that capacity he administers the system of land registration known as the Torrens System, the main feature



of which is a certificate of title guaranteed by the Victorian Government. The Registrar of Titles has registered Crown grants of all land alienated by the Crown since 2 October 1862. He deals with the conversion of General Law titles to Torrens titles, by issuing certificates of title in place of the old title deeds. He also registers transfers, mortgages, and other dealings with land under the Torrens System, in accordance with the provisions of the *Transfer of Land Act 1958*.

#### *Crimes Compensation Tribunal*

The *Criminal Injuries Compensation Act 1972* established the Crimes Compensation Tribunal consisting of a person of not less than seven years standing as a barrister and solicitor. The Tribunal administers a scheme designed to compensate persons who have suffered physical injury or nervous shock as a result of a criminal act. Dependents of a person who has died as a result of a criminal act may also be entitled to compensation. A limit of \$7,500 in respect of any award became effective on 1 October 1980.

#### VICTORIA—CRIMES COMPENSATION TRIBUNAL: SUMMARY OF PROCEEDINGS AT 30 JUNE

Item	1978	1979	1980	1981	1982
Applications—					
Pending at 1 July of previous year	218	321	400	639	981
Further applications received to 30 June	1,117	1,495	1,861	2,339	2,581
Determinations—					
Final awards made	987	1,377	1,596	1,703	1,797
Applications refused or withdrawn	27	39	26	68	84
Applications pending at 30 June	321	400	639	981	1,594
Orders made for advance payments of compensation	—	—	—	—	—
Appeals from refusal of applications	—	—	—	—	—
Analysis of final awards—					
Total compensation awarded \$	1,049,014	1,346,052	1,885,310	2,331,100	2,502,157
Average award of compensation \$	1,063	978	1,181	1,369	1,392

#### *Government Shorthand Writer's Office*

The Government Shorthand Writer's Office was established in October 1854. It provides verbatim transcripts of proceedings before Royal Commissions and Boards of Inquiry, the Industrial Relations Commission of Victoria various tribunals, conferences, and seminars.

#### *Motor Accidents Tribunal*

Established by the *Motor Accidents Act 1973*, the Tribunal hears appeals against decisions of the Motor Accidents Board in relation to the no-fault scheme of compensation for victims of road accidents.

#### *Raffles and Bingo Permits Board*

Since the Raffles and Bingo Permits Board was established in August 1977, more than 2,700 different organisations have conducted bingo sessions in Victoria. More than 1,000 bingo sessions and 250 raffles are approved each week. Over \$4,065,000 has now been transferred to the Hospitals and Charities Commission from the Raffles and Bingo Fund into which are paid permit fees and surcharge payments from bingo games.

Further references: Registry of Friendly Societies, Benefit Associations, and Industrial and Provident Societies, *Victorian Year Book 1981*, p. 705

#### *Small Claims Tribunals*

Small Claims Tribunals, established under the *Small Claims Tribunal Act 1973*, provide a simple and inexpensive procedure for consumers to have their disputes settled outside the ordinary courts. They are administered by the registrar under the direction of the Minister for Consumer Affairs. These tribunals are constituted by referees, who are appointed from persons qualified as stipendiary magistrates or barristers and solicitors, and were established to hear applications by consumers in respect of claims for payment of amounts up to \$1,500.

Consumers are defined as persons, other than corporations, who buy or hire goods not for resale or for whom services are supplied. They may apply, on payment of a \$5 fee, to the registrar in the Melbourne metropolitan area, or to the clerk of a Magistrates' Court outside that area. The registrar, who provides administrative services to the tribunals,

gives notice of the application to the respondent, the trader concerned, and fixes a date for the hearing of the claim. Lodgement of the application with any money claimed to be owed to the trader by the consumer precludes the issue in dispute being heard in any court unless proceedings have already been commenced.

The primary function of the referee is to effect a settlement acceptable to all parties, but if this is impossible, he shall either make an order or dismiss the claim; his order shall be final and without appeal. No costs are allowable and each party conducts its own case without the services of an agent except in the case of corporations or because of necessity. No practising barrister or solicitor is generally allowed to appear. Hearings are in private and sworn evidence, either verbal or in writing, is given, but tribunals are not bound by the rules of evidence and may inform themselves in any way they think fit. There are currently three full-time referees and five part-time referees.

Since the tribunals came into operation on 4 February 1974, a total of 19,460 claims have been lodged for determination by the tribunals.

#### VICTORIA—SMALL CLAIMS TRIBUNALS: NUMBER OF CLAIMS DETERMINED

Classification	1980-81		1981-82	
	Number	Per cent	Number	Per cent
Food and beverages	4	0.18	n.p.	n.p.
Clothing, footwear, and drapery	169	7.56	182	7.51
Consumer durables	454	20.30	474	19.56
Motor vehicles and other transport equipment	567	25.36	508	20.96
Building and construction	547	24.46	651	26.87
Miscellaneous products	155	6.93	147	6.07
Transport and energy services	110	4.92	98	4.04
Insurance and finance	17	0.76	29	1.20
Real estate and accommodation	4	0.18	n.p.	n.p.
Miscellaneous services	209	9.35	319	13.17
Total	2,236	100.00	2,423	100.00

#### *Market Court*

The *Market Court Act 1978* was passed by the Victorian Parliament in December 1978 and introduced on 1 June 1979 as an additional means of preventing unfair trade practices in the market-place. The Court comprises a president, who is a judge of the County Court, and two advisory members: one representing the interests of traders and the other representing the interests of consumers.

Only the Director of Consumer Affairs is able to apply to the Court for an order against a trader who, in the course of his business, repeatedly engages in conduct that is unfair to consumers. The Court is able to make an order against a trader concerned in the application, either totally prohibiting him from engaging in unfair conduct, or prohibiting him from entering into contracts with consumers unless the contracts complied with the terms and conditions specified by the Court. Penalties of up to \$5,000 can be imposed on persons who fail to comply with an order. Provision is also made for the Director to enter into Deeds of Assurance with traders to ensure that they will refrain from engaging in conduct that is unfair to consumers.

#### *Estate Agents Board*

The Estate Agents Board is constituted under the *Estate Agents Act 1980*. It is responsible for the licensing, monitoring, audit, discipline, and education of the estate agent profession. It investigates complaints from the public and other matters in breach of the Estate Agents Act, regulations, or rules.

The Board also controls the Estate Agents Guarantee Fund, from which financial reimbursement is made to persons who have suffered a pecuniary loss as a result of defalcation by an estate agent.

#### *Office of Finance Brokers, Money Lenders, and Auctioneers*

The Office of Finance Brokers, Money Lenders, and Auctioneers administers the *Finance Brokers Act 1969*, the *Money Lenders Act 1958*, and the *Auction Sales Act 1958*, and receives and investigates complaints about licensees under these Acts.

*State Classification of Publications Board*

The State Classification of Publications Board was established under a section of the *Police Offences Act 1958*. Where the Board classifies a publication as a restricted publication, that publication shall be subject to restrictions in relation to its sale, inspection, display, and advertisement.

*Office of the Public Trustee*

The Public Trustee, appointed pursuant to the *Public Trustee Act 1958*, manages the estates of mental patients and other persons incapable of managing their own affairs and may, on the order of a judge of the Supreme Court, deal with property of which the owner is unknown or cannot be found.

The Public Trustee may be appointed executor of the Will of any person, or subject to the provisions of the Public Trustee Act, may be appointed Administrator of the estate of any person who dies without leaving a Will. In such cases, he manages the estate and distributes the assets among the beneficiaries according to the law. The Public Trustee may also be appointed a trustee, receiver, guardian, committee, agent or Attorney in any appropriate case. (Further information on the activities of the Public Trustee can be found in Chapter 21 of this *Year Book*.)

*Companies Auditors Board*

The Companies Auditors Board was established by the *Companies (Administration) Act 1981*. The Board is responsible for the registration and discipline of registered Company Auditors and Liquidators.

*Victorian Taxation Board of Review*

The Victorian Taxation Board of Review was established under the *Taxation Appeals Act 1972*. Its functions are to review decisions made by the following bodies: (1) Commissioner for Land Tax, (2) Controller of Stamp Duties, (3) Commissioner of Probate Duties, (4) Commissioner of Gift Duties, (5) Commissioner of Payroll Tax, and (6) Commissioner for Business Franchises.

*Licensing legislation*

After nearly one hundred years operation of the system of Licensing Magistrates or of the Licensing Court, the Licensing Act was repealed and the Licensing Court abolished by the *Liquor Control Act 1968*, which came into effect on 1 July 1968. This Act incorporated a number of recommendations of the Royal Commission of Inquiry on Liquor in Victoria.

The Licensing Court of three members was replaced by the Liquor Control Commission of four members, the chairman being a judge of the Liquor Control Commission. Numerous alterations were made in the licensing law and practice of the State, the new Act completely re-writing the law. All fees taken under the new Act and all fines, penalties, forfeitures, and money incurred or accruing under it are paid into the Licensing Fund into which was also paid the amount standing to the credit of the Licensing Fund established under the *Licensing Act 1958*. A complete new code of compensation payable to owners and occupiers of licensed premises deprived of licences is set out in the Act, and provision is made for all payment of compensation out of the Licensing Fund, as well as all costs incurred in connection with the administration of the Act. Where the money remaining in the Licensing Fund on 30 June in any financial year is greater than the money therein on 1 July in that financial year, the surplus is to be transferred into the Consolidated Fund.

## VICTORIA—NUMBER OF LIQUOR LICENCES AT 30 JUNE

Type of licence	1977	1978	1979	1980	1981
Hotel keeper	1,441	1,435	1,432	1,431	1,431
Club	452	459	469	479	496
Retail bottled liquor	728	731	744	751	766
Wholesale liquor merchant	102	102	105	109	114
Australian wine	13	13	13	13	13
Vignerons	51	65	67	70	85

VICTORIA—NUMBER OF LIQUOR LICENCES AT 30 JUNE—*continued*

Type of licence	1977	1978	1979	1980	1981
Brewer	7	7	7	7	7
Restaurant	269	287	294	317	345
Cabaret	26	29	33	42	47
Theatre	5	5	5	4	4
Cider tavern	n.p.	n.p.	n.p.	3	n.p.
Residential	n.p.	n.p.	n.p.	n.p.	4
Tourist facility	6	12	14	16	20
Convention facility	—	—	—	n.p.	n.p.
Canteen	—	—	—	7	7
Arts centre	—	—	—	—	n.p.
Total	3,104	3,149	3,188	3,253	3,345

NOTE. The above table details licences on hand at 30 June each year under the *Liquor Control Act* 1968, according to the annual report of the Liquor Control Commission.

*Racing legislation*

The *Racing Act* 1958 regulates horse and pony, harness, and dog racing. Under the Act the control of harness and dog racing is vested in the Harness Racing Board and the Dog Racing Control Board, respectively.

Additional legislation, relating to totalizators and the Totalizator Agency Board, is contained in the *Racing (Totalizators Extension) Act* 1960. Also, the *Stamps Act* 1958 has provisions relating to the registration fees of bookmakers and bookmakers' clerks, and to the duty payable on betting tickets.

## VICTORIA—RACING AND HARNESS RACING MEETINGS

Particulars	Year ended 31 July—				
	1978	1979	1980	1981	1982
RACING					
Number of meetings—					
Metropolitan courses	84	84	84	83	83
Other courses	389	398	397	427	433
Number of events—					
Metropolitan courses	698	702	688	672	671
Other courses	3,003	3,138	3,124	3,344	3,399
Amount of stakes—					
Metropolitan courses (\$'000)	6,118	7,763	8,560	8,883	10,068
Other courses (\$'000)	3,526	3,758	4,062	4,307	5,014
HARNESS RACING					
Number of meetings—					
Metropolitan courses	55	55	59	60	60
Other courses	267	268	268	268	264
Number of events—					
Metropolitan courses	430	426	443	474	471
Other courses	2,335	2,360	2,164	2,361	2,332
Amount of stakes—					
Metropolitan courses (\$'000)	1,981	1,934	2,305	2,655	3,069
Other courses (\$'000)	2,406	2,398	2,511	2,882	3,180

Further reference: *Victorian Year Book* 1966, pp. 319–20

*Bankruptcies*

A Bankruptcy Act passed by the Commonwealth Parliament in October 1924, and amended in 1927, was brought into operation on 1 August 1928. It superseded the Bankruptcy and Insolvency Acts of the States, with the exception of any provisions relating to matters not dealt with in the Commonwealth Act. On 4 March 1968, the *Bankruptcy Act* 1924–1965 was repealed and the *Bankruptcy Act* 1966 came into operation.

Detailed statistics concerning bankruptcies are published in the annual report by the Commonwealth Minister for Business and Consumer Affairs on the operation of the *Bankruptcy Act* 1966.

## VICTORIA—BANKRUPTCIES

Year	Bankruptcies	Orders for administration of deceased debtors' estates	Arrangements with creditors without sequestrations	Total
NUMBER				
1976-77	393	—	82	475
1977-78	583	n.p.	n.p.	707
1978-79	763	n.p.	n.p.	973
1979-80	1,227	8	229	1,464
1980-81	2,274	5	235	2,514
LIABILITIES (\$'000)				
1976-77	7,555	—	10,479	18,034
1977-78	14,890	43	5,466	20,399
1978-79	17,272	68	8,525	25,865
1979-80	33,509	44	10,048	43,601
1980-81	39,529	409	17,420	57,358
ASSETS (\$'000)				
1976-77	2,354	—	9,120	11,474
1977-78	4,750	14	2,794	7,558
1978-79	3,456	29	4,784	8,269
1979-80	6,754	5	2,592	9,351
1980-81	4,310	8	3,894	8,212

## Victoria Police

## Introduction

The Victoria Police Force is charged with the responsibility of maintaining the peace, protecting the lives and property of all citizens, and generally enforcing the laws of the State. The main functions of the Victoria Police may be summarised as:

- (1) Maintaining law and order;
- (2) protecting the community and its property;
- (3) prevention of crime;
- (4) detection of offenders;
- (5) controlling road traffic, including the alleviation of traffic congestion, prevention of road accidents and, where necessary, the investigation of accidents; and
- (6) assisting anyone in need, particularly in times of emergency.

The collective requirements of policing extend from many mundane matters to problems of a serious nature, and include the organising of, and participating in, search and rescue operations during times of flood, fire, and other major disasters.

## Organisation

The Chief Commissioner, who controls the operations of the Force, is responsible to the Minister for Police and Emergency Services. He is assisted operationally and administratively by two Deputy Commissioners, six Assistant Commissioners, and the Director of Administration. The Assistant Commissioners and the Director are each responsible for a department of the Force, namely, crime, operations, personnel, traffic, services, research and development, and administration.

The conduct of members and the internal affairs of the Force are controlled by the Police Regulation Act and its Regulations, the Police Manual, and Police Standing Orders. Two statutory bodies, the Police Service Board and the Police Discipline Board, have jurisdiction in aspects of police control.

Victoria is divided into police districts and divisions which facilitate the administration and the provision of services. Modern policing is directed towards ensuring that resources are utilised to their fullest capacity. In an emergency, operational units can operate across district and divisional boundaries and be deployed by the police communications system, ensuring that all available mobile units can be directed to areas of need.

Each metropolitan police district and Geelong has its own crime car squad of approximately twenty-six members providing an effective anti-crime patrol capability. These members also contribute to the visible police presence as they perform duty in uniform and in marked police vehicles.

In addition, there are offices of the Criminal Investigation Branch and the Traffic Operations Group located throughout Victoria, while at Force level, the Independent Patrol Group has been developed to lend effective support to all branches and departments.

Co-ordination is the main concept of police operations. As a result of recent changes, the improved organisational structure will enable more effective co-ordination of administrative and operational activities. All departments are now working to provide a co-ordinated blueprint for these activities and the Force's requirements during the next five to ten years. The attainment of planned objectives will be determined, to a great extent, by the success of the Personnel and Services Departments in providing the trained manpower and equipment necessary for the various tasks.

A history of the Victoria Police Force, entitled *Police in Victoria 1836-1980*, has recently been published by the Victorian Government Printer. A more detailed publication on this subject is now in the process of being compiled.

#### *Specialised squads*

Within the general framework of police activities there are specific areas which, because of the extent and nature of the work involved, require special squads. These deal with homicide, company fraud, licensing, gaming, vice, arson, drugs, armed robbery, community policing and police community involvement programmes. Special squads have also been formed to utilise dogs, horses, boats, and aircraft in operational areas of police activities.

The Search and Rescue Squad provides assistance in emergency situations and the Accident Investigation Squad investigates and analyses serious motor vehicle accidents.

#### *Recruitment and training*

The authorised strength of the Police Force at 30 June 1982 was 8,200. Increases in authorised strength are effected by increasing the number of squads in training. Persons between 18½ years and 35 years, who are accepted as recruits, undergo two years probationary training which includes a 20 week course of training at the Police Training Academy, Glen Waverley, duties at specially selected police stations and at major supportive branches of the Force.

The Academy is progressively being developed to provide additional educational, training, and accommodation facilities. As well as providing for additional recruits, the Academy's development is being planned to include all facilities for sub-officer and detective training.

Police in-service training and promotional examinations are conducted by the Police Department for members wishing to advance in their career. Ex-members of the Force between 31 years and 65 years of age may be recruited as reservists for the performance of limited police duties.

#### *Crime prevention and detection techniques*

Several noteworthy features of police work have been developed in recent years. An on-line computer system code named PATROL provides information on stolen and wanted motor vehicles. The computer forms an integral part of a system which will eventually encompass all police records of criminal histories, stolen property, fingerprints, and the *modus operandi* of criminals.

The use of aircraft by the Police Air Wing provides valuable assistance in traffic control, the combating of serious crime such as armed robbery, and the transportation of police personnel and prisoners. A twin-engined Aerospatiale Helicopter was purchased in 1979 to provide increased flexibility to the services provided by the Police Air Wing, including Aerial Support To Routine Operations (ASTRO) and assisting in search and rescue missions. This aircraft has a 24 hours-a-day operational capability and is fully instrumented for flying in adverse weather conditions.

An important innovation is the Crime Collator System which is proving an effective law enforcement aid. This system is a formal method of receiving, storing, and disseminating local information of police interest in records maintained at a local level, with a facility for passing suitable information on to the central information repositories.

Communications are constantly being improved. The Communications Centre in Russell Street, Melbourne, has grown from a small 2kW transmitter to the present D24 complex

connecting all parts of Victoria. The increasing use of personal radio communication by the policeman on the beat has also improved efficiency. In addition to radio communications, telex machines are located at selected stations throughout the State, as well as radio monitors in all metropolitan stations with a 24 hour patrol capacity. Sophisticated electronic, radio, and ancillary control room equipment has been installed in a new communications control room at the Russell Street Police Centre to provide accurate and rapid transmission of information and expeditiously handle calls for service from the public. The centre commenced operations in mid-1982.

Forensic science now plays a significant role in the detection of criminal offenders. The Police Forensic Science Laboratory is equipped to provide information on drugs, poisons, flammable liquids, paints, fabrics, soils, and many other substances which by analysis may give some clue to assist in solving a crime. Blood samples taken from motor vehicle accident victims admitted to hospital are analysed at the Laboratory for alcoholic content and the findings may result in prosecutions. A Document Examination Section is equipped to examine handwriting and documents suspected of being forged, and there is a Ballistics Section which provides information on firearms. The Laboratory also has a mobile workshop used in on-site investigations. Steps are being taken to build a new Laboratory at Macleod.

#### *Road toll*

The greatest problem confronting the Victoria Police is the road toll. It is the Force's highest priority to achieve a reduction in the road toll and strategies have included maximising visibility of units of the Traffic Operations Group on highways, special enforcement efforts directed to problem areas, and saturation techniques in selected locations for Random Breath Testing Stations.

The Traffic Operations Group forms the operational arm of the Traffic Department and its primary responsibilities are the prevention of road accidents and traffic law enforcement.

#### *Research and development*

The Research and Development Department commenced operations in May 1981, and is responsible for the strategic development of the Police Force, including the co-ordination of forward planning, the optimisation of resources, and the implementation of initiatives to combat crime and other major social problems requiring police response.

A notable project undertaken by the Research and Development Department during 1981 was the establishment of the Police Community Involvement Programme at Frankston. This programme aims at closer co-operation between police and the public in the prevention of crime and disorder at the local level. The interim report on the Programme, completed in November 1981, disclosed many positive developments and forecast an encouraging future for police-community relations.

During 1981, the Force also moved to implement some of the proposals resulting from the Integrated Community Policing experiment in Prahran, outlined in the 1982 *Victorian Year Book*. The Victorian Government has been requested to legislate for police to have broader powers to require a person to identify himself.

The Force has also asked for authority to tow away vehicles illegally parked across driveways, which the experiment identified as being a time consuming problem. In addition, the Force has introduced a scheme for ensuring that persons involved in accidents know the results of police inquiries as soon as possible.

#### *Community Policing Squads*

Community Policing Squads, located throughout Melbourne and in Geelong, are based on the Women Police Divisions, which still exist in country districts. Community policing is a style of law enforcement which emphasises the close co-operation between the police and the community, to prevent crime by marshalling community resources. Duties include:

- (1) Interviewing and taking proceedings against child offenders;
- (2) assisting children in need of care (exposed to risk);
- (3) establishing or assisting crime prevention in schools and elsewhere;
- (4) providing a uniform patrol function;
- (5) helping and advising children, parents, and families;

- (6) ensuring that the Force has a practical, coherent, and sensitive approach to problems experienced by children and families;
- (7) combating child maltreatment; and
- (8) identifying and taking action about locations and persons placing children at risk.

#### *Liaison committees*

A number of liaison committees have been established with other organisations during the past few years in an attempt to overcome various problems. These committees include the Police/Lawyer Liaison Committee; Ethnic Affairs Police Liaison Committee; Police Community Welfare Services Department Liaison Committee; Media/Police Liaison Committee; and Police/Medical Officers' Liaison Committee.

#### *Expenditure*

The operational expenses of the Victoria Police Force during 1981-82 were \$235.7m and the expenditure on capital and maintenance works was \$10.69m. Victorian Government expenditure on the operations of the Victoria Police Force represents a significant element of the annual Victorian Budget allocations to government departments.

#### VICTORIA—POLICE FORCE AT 30 JUNE

Particulars	1978	1979	1980	1981	1982
Authorised strength	7,500	7,500	8,000	8,050	8,200
Actual strength (a)	7,001	7,468	7,698	7,986	8,198
C.I.B., etc. (b)	961	1,058	1,114	1,223	1,284
Police-women	365	493	554	568	666
Cadets (c)	318	337	262	84	—
Reservists	135	142	141	126	131

(a) Includes police-women but excludes reservists.

(b) Criminal Investigation Branch, Forensic Science Laboratory and Information Bureau.

(c) The Police Cadet Training Scheme has been phased out in accordance with a Government decision in September 1980.

Further references: *History of the Victoria Police, Victorian Year Book* 1961, pp. 318-21; 1982, pp. 688-90.

#### NATIONAL COMPANIES AND SECURITIES COMMISSION\*

##### **Introduction**

The National Companies and Securities Commission (NCSC) is a Commonwealth statutory authority and the central co-ordinating body in the Co-operative Scheme established by an agreement (the "Formal Agreement") on 22 December 1978 between the Commonwealth and six States of Australia. The objective of the Scheme is uniformity in the laws relating to companies and the regulation of the securities industry and in the administration of these laws in the States and Territories of Australia, in order to promote commercial certainty, reduced business costs, greater efficiency in capital markets, and investor confidence in securities markets through suitable investor protection.

The NCSC was established by the *National Companies and Securities Commission Act* 1979 and is based in Melbourne. Its three full time and two part time members took up office on 11 March 1980. Funds for the functioning of the NCSC are provided in equal shares, one-half by the Commonwealth and one-half jointly by the States. Funds for the establishment of the NCSC were likewise provided. At present, the Northern Territory is not a participant in the Scheme.

##### **Administrative framework**

The administrative framework for the Co-operative Scheme comprises the following bodies:

- (1) Ministerial Council for Companies and Securities,
- (2) National Companies and Securities Commission, and
- (3) State and Territory Corporate Affairs Offices.

The Formal Agreement also provides for the establishment of a Companies and Securities Law Review Committee, the principal function of which will be to carry out

\* This article is the latest in a series of special articles outlining specific areas of law in Victoria. Previous articles in this series, and the *Victorian Year Book* in which they appeared, are listed at the end of the article.



research into, and advise on, law reform in relation to the legislation and regulations making up the National Scheme.

The Ministerial Council consists of the Commonwealth and the six State Attorneys-General, and has the overall political responsibility for the Scheme to the exclusion of individual Ministerial control excepting in specific circumstances. The functions of the Ministerial Council, which is serviced by its own small, independent secretariat based in Sydney, are, first, to keep the operations of the legislation under review and, second to exercise general oversight and budgetary control over the functioning of the NCSC.

The NCSC is responsible to and takes direction from the Ministerial Council and, in addition to having overall responsibility for the entire area of policy and administration with respect to company law and the regulation of the securities industry, has the power to make recommendations to the Ministerial Council in relation to new laws or the amendment of existing laws. The NCSC receives its powers under the National Companies and Securities Commission Act of the Commonwealth and the National Companies and Securities Commission (State Provisions) Acts of the States, as well as under the various substantive laws. The Commission is empowered to delegate the functions and powers conferred on it by such legislation to State and Territory administrations and, in so doing, is required to have regard to the principle of maximum development of a decentralised capacity to interpret and promulgate the uniform policy and administration of the Co-operative Scheme.

To the maximum extent practicable, the administration of the Scheme legislation is carried out by the existing State and Territory Corporate Affairs Offices and their staffs acting under delegations from the NCSC. The Delegates have the day to day administration of most aspects of companies and securities legislation. In particular, all documents that are required to be lodged under the various Acts in the Scheme and all applications for the exercise of the NCSC's powers are lodged with the Corporate Affairs Offices. Where the NCSC proposes to exercise its discretionary power in a specific case, it consults with the Corporate Affairs Offices. As national experience is built up for setting national policies, it is expected that more of the decision making on specific issues will devolve on the Corporate Affairs Offices leaving the NCSC free to concentrate on policy innovation matters which transcend the interests of any one jurisdiction.

The Territory and State Corporate Affairs Commissions, in addition to being the Delegates of the NCSC, are the advisers of their respective Ministers who, in turn, make up the Ministerial Council.

#### **Scheme legislation**

The objective of uniformity of legislation through co-operation has been achieved by the Commonwealth Government enacting legislation relating to company law and the securities industry but limited in scope of operation to the Australian Capital Territory.

The legislation falls into five substantial groups:

- (1) The National Companies and Securities Commission laws—effective 1 February 1980,
- (2) The Companies (Acquisition of Shares) laws—effective 1 July 1981,
- (3) The Securities Industry laws—effective 1 July 1981,
- (4) The Companies laws—effective 1 July 1982, and
- (5) The Companies and Securities (Interpretation and Miscellaneous Provisions) laws—effective 1 July 1981.

Each principal Act has satellite legislation which may be in the form of subsidiary Acts relating to fees, transitional and miscellaneous local matters, and regulations.

The States for their part have enacted complementary, as distinct from uniform laws. In the case of the National Companies and Securities Commission Act, the National Companies and Securities Commission (State Provisions) legislation recognises the NCSC created by the Commonwealth Act as a representative of the State Crown, and repeats the powers of the Commission as State powers where necessary.

Each of the other substantive legislative groups has its counterpart in a State Application of Laws Act. The Application of Laws Act provides that with the necessary modifications in geographic and other local references, the Commonwealth Acts as amended and in force at any time, as well as the Commonwealth regulations, apply as laws and regulations, respectively, of the State and are referred to as Codes, e.g., Companies (Acquisition of Shares) (Victoria) Code.

A most important power conferred on the NCSC is that of holding public or private hearings with evidence that may be called on subpoena, and in which the Commission is not bound by strict technical rules of evidence.

Under the Companies (Acquisition of Shares) Act, the NCSC may declare an acquisition of shares or other conduct during a takeover unacceptable or may in its discretion allow exemption from, or modification of, any of the statutory provisions. Where the NCSC has declared an acquisition of shares or other conduct to be unacceptable, it may after conducting a hearing, make certain temporary administrative orders in relation to the matter. Final orders may only be made by the Supreme Court.

The NCSC also has the power under the Securities Industry Act to prohibit trading in particular securities for up to twenty-one days, if it is of the opinion that this is necessary.

The NCSC has general powers under the whole of the legislation to undertake investigations and may intervene in any court proceedings relating to matters arising under the legislation.

### **Stock Exchanges—co-regulation**

An essential element of the Commission's administration of the Securities Industry legislation is its working relationship with the Stock Exchanges through the Australian Associated Stock Exchanges. In the Securities Industry legislation, the perceived limitations of exclusive self regulation of the stock exchanges have been balanced with the likelihood that regulation solely by government would be ineffective.

The pattern of regulation thus evolved, combining both industry and government responsibilities, is termed "co-regulation". The principal features of such "co-regulation" are:

- (1) The NCSC has the authority and responsibility to ensure compliance by all stockbrokers with the requirements of the Securities Industry Act;
- (2) the exchanges have authority and responsibility to enforce on their own initiative compliance by members with standards going beyond the strict legal provisions;
- (3) in maintaining the public market, the exchanges have authority and responsibility to impose requirements in respect of the securities traded for the protection of the interests of the public; and
- (4) The NCSC supervises the exercise of these powers in order to ensure that they are used effectively, that the exchanges in fact fulfil the responsibility assigned to them, and that they are not used in a manner inimical to the public interest or unfair to investors.

### **Operations**

#### *Policy*

The NCSC seeks to perform its functions and exercise its powers in a manner designed to encourage and secure compliance with the spirit and intent of the law and promote high standards of professional competence and integrity. As part of the strategy for these purposes it issues policy statements. Its statements of policy are, whenever appropriate, prepared after careful examination of the views of interested bodies. The NCSC accordingly believes that such statements should be regarded as persuasive statements of desirable commercial and financial practice.

In addition, the NCSC has developed several other series of published statements including practice notes, which interpret and expand the black letter law and are in general provoked by a particular case coming to notice or a specific question being put by a practitioner. By expressing its view of the proper interpretation of the law in this way, the NCSC hopes both to increase commercial certainty and to reduce business costs by forestalling litigation, thus making progress towards two of the aspirations of the Formal Agreement.

#### *Administrative development*

With a view to achieving uniformity in, and simplification of, administrative requirements whenever this is advantageous, and to ensure that businesses conducted in more than one State or Territory are not subject to disparities in such requirements, the NCSC has developed, in collaboration with State and Territory administrations, a series of internal procedure handbooks for staff use throughout Australia.

*Consultative arrangements*

From its formation, the NCSC has systematically developed formal and informal channels of consultation with bodies, including overseas bodies, concerned with the administration of company law and the regulation of the securities industry, in particular the stock exchanges, banking and merchant banking communities, industry associations, and the accountancy and legal professions. Formal procedures for consultation with the Foreign Investment Review Board are in operation.

*Other activities*

The NCSC has given priority to development of legislative proposals relating to specific matters within its jurisdiction and has undertaken projects covering a wide range of issues identified in the examination and administration of particular provisions of the Co-operative Scheme legislation.

In addition, it has inquired into and reported on matters referred by the Ministerial Council such as the possible establishment of an Accounting Standards Review Board. Most recently, the Ministerial Council agreed to the need for separate legislation to regulate futures trading on a national basis. The administration of the proposed legislation will be carried out by the NCSC and will represent a significant expansion of the Commission's area of responsibility.

Further references: Functions of law in a community, *Victorian Year Book* 1961, pp. 289-91; Legal system in Victoria, 1961, pp. 291-2; Criminal law and its administration in Victoria, 1963, pp. 322-30; Law of torts in Victoria, 1964, pp. 339-41; Law of contract in Victoria, 1965, pp. 318-21; Law of retail sales and hire purchase in Victoria, 1966, pp. 298-301; Law relating to export trade 1968, pp. 572-5; Commonwealth and State taxation law, 1969, pp. 590-4, and 1970, pp. 588-91; Industrial law in Victoria, 1971, pp. 568-71; Legal education, 1971, pp. 571-3; 1980, pp. 704-8; Administrative law in Victoria, 1972, pp. 561-5; Family law in Victoria, 1975, pp. 853-9; Law relating to trade practices and consumer legislation, 1976, pp. 765-7; Company law in Victoria, 1977, pp. 891-5; Victorian Constitution, 1978, pp. 759-61; Workers Compensation Legislation, 1979, pp. 691-3; Law of Succession in Victoria, 1981, pp. 711-13; Third Party Liability, 1982, pp. 692-6

## BIBLIOGRAPHY

## ABS publications

Social indicators (4101.0)  
General Social Survey, Australia: Crime Victims (4105.0)  
General Social Survey, Australia: Firearm Ownership (4106.0)  
Public authority finance (5503.0)  
Public authority finance: State and local authorities (5504.0)  
Public authority finance: State Government: social services (5508.0)

## Other publications

ATTORNEY-GENERAL OF VICTORIA. *Law Bulletin*.  
LAW INSTITUTE OF VICTORIA. Various pamphlets on aspects of the law.  
VICTORIA POLICE. *Annual report; Statistical Review of Crime*.  
VICTORIAN LAW DEPARTMENT. *Law Calendar*.  
VICTORIAN LAW REFORM COMMISSIONER. Various reports.