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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 responsibilites of the main departments and agencies concerned, including the Victoria Police; and
(3) a special article outlining a specific area of law in Victoria (Residential tenancies in this edition of the *Victorian Year Book).*

JUDICIAL SYSTEM

Victorian Judiciary

SUPREME COURT AT 31 JULY 1984, VICTORIA

Chief Justice

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

Puisne Judges

The Hon. Sir John Erskine Starke
The Hon. Sir Kevin Victor Anderson
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 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. Sir James Augustine Gobbo
The Hon. Mr Justice Alec James Southwell
The Hon. Mr Justice Robert Clive Tadgell
The Hon. Mr Justice Alastair Bothwick Nicholson
The Hon. Mr Justice George Hampel
The Hon. Mr Justice William Frederick Ormiston
The Hon. Mr Justice Howard Tomez Nathan

JUDGES OF THE COUNTY COURT AT 31 JULY 1984, VICTORIA

Chief Judge

Glenn Royce Donal Waldron

Judges

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

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

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

In addition, the Constitution in section 76 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 and maritime matters. Pursuant to the last named provision the Commonwealth Parliament by virtue of 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 the 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 1984 the Parliament enacted section 39B of the *Judiciary Act* 1903 giving the Federal Court of Australia original jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth. The jurisdiction does not however, extend to: (1) a person holding office under the *Conciliation and Arbitration Act* 1904 or the *Coal Industry Act* 1946; or (2) a judge or judges of the Family Court of Australia.

Section 38 was also amended to give the High Court power to remit matters arising under that section to either the Federal Court or the Supreme Court of a State or Territory.

A single justice of the High Court sits as a Court of Disputed Returns under the Commonwealth Electoral Act.

The primary functions of the High Court are, first, interpreting the Constitution and second, hearing and deciding appeals from judgements of the Federal Court of Australia, the Family Court of Australia, and the Supreme Courts of the State.

In 1984 the Parliament enacted amendments to section 35 and inserted section 35A in the *Judiciary Act* 1903. The effect of section 35 was to abolish appeals as of right to the High Court and to provide that an appeal shall not be brought unless the High Court grants leave or special leave to appeal.

Section 35A sets out the criteria which the High Court shall have regard to in considering whether to grant an application for special leave to appeal.

The purpose of the legislative changes to the jurisdiction of the High Court was to relieve the Court of original jurisdiction matters which were time consuming and which could just as effectively be dealt with by the Federal Court or Supreme Courts of the States. The removal of the right of appeal was to ensure that only the most important questions of law occupied the time of the Court and to bring the High Court into line with the ultimate appellate Courts of other nations such as the House of Lords, the Supreme Court of the United States, and the Supreme Court of Canada, where appeals may only be brought with leave of the Court.

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 (Limitation 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 is the highest 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. That Act provides for the Supreme Court to consist of not more than thirty judges of whom one is the Chief Justice. All judges are appointed by the Governor on the advice of the Executive Council from the ranks of practising barristers of not less than eight years standing, and retire at the age of seventy-two years. At 30 June 1984 the Supreme Court consisted of a Chief Justice and twenty-one Puisne Judges (judges of the Supreme Court other than the Chief Justice are called Puisne Judges).

The Full Court (usually three, but 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 a case on the law.

The main activities of the Supreme Court are centred at Melbourne, and judges go 'on circuit' to Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Sale, Shepparton, Wangaratta, and Warrnambool.

Officers of the Supreme Court include the Senior Master, three other masters, the Listing Master, the Taxing Master, and the Registrar of Criminal Appeals, and all must be barristers and solicitors of five years standing.

The masters deal with various matters entrusted to them by Rules of Court made by judges, and the Senior Master is responsible for the investment of money ordered to be paid into Court. The Listing Master arranges the lists of civil cases for hearing, the Taxing Master fixes and settles bills of costs, and the Registrar of Criminal Appeals is the Registrar of the Full Court in respect of criminal appeals from decisions of the Supreme and County Courts.

Other officers of the court are the Prothonotary, the Sheriff, and the Registrar of Probates.

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, the Taxing Master, and the Registrar of Criminal Appeals 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.

If not settled by negotiation between the parties the action ultimately 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 Director of Public Prosecutions and signed by him or by one of the Prosecutors for the Queen.

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 689).

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.

SUPREME COURT, CIVIL BUSINESS, VICTORIA

Particulars	1978	1979	1980	1981	1982	1983
Causes entered –						
For assessment of damages	58	81	79	27	41	59
For trial	1,423	2,304	2,124	2,289	3,937	3,375
Number of cases listed for trial –						
By juries of six	1,001	1,291	748	1,332	2,032	1,027
By a judge	681	896	657	937	1,635	1,360
Verdicts returned for –						
Plaintiff	180	221	275	n.a.	n.a.	n.a.
Defendant	17	22	21	24	n.a.	n.a.
Amount awarded ($'000)	2,144	3,449	2,605	n.a.	n.a.	n.a.
Writs of summons issued	9,087	11,960	11,106	9,589	11,738	12,590
Other original proceedings	137	164	146	n.a.	182	193
Appellate proceedings (other than criminal appeals) heard and determined –						
By Full Court	63	53	49	59	86	61
By a judge	135	114	131	n.a.	n.a.	n.a.

SUPREME COURT, WRITS RECEIVED BY THE SHERIFF, VICTORIA

Year	Possession	*Fieri Facias*	*Venditioni Exponas*	Attachment	Order to arrest, including ships	Other	Total
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
1982	987	1,199	18	—	7	12	2,223
1983	906	1,180	23	2	6	17	2,134

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 $100,000, and in all other actions where the amount claimed does not exceed $25,000.

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 1984 the County Court comprised a Chief Judge (a position created in March 1975 in recognition of the increasing importance of the Court) and 37 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 seventy-two 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 seven divisions of the Workers Compensation Board, the Market 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, 13 judges; civil juries, 3 judges; civil cases, 4 judges; appeals, 2 judges; chambers and adoptions, 1 judge; circuit, 6 judges; Workers Compensation Board, 7 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.

COUNTY COURT, MELBOURNE BUSINESS

Particulars	1978	1979	1980	1981	1982	1983
Summonses issued	46,270	47,843	47,715	*(a)*20,452	22,995	22,798
Warrants of execution issued	17,426	18,702	17,292	*(a)*9,247	4,863	4,696
Appeals from Magistrates' Courts lodged	4,372	4,651	5,886	*(b)*2,139	2,209	2,111
Adoption applications filed	706	650	597	542	535	475
Civil trials heard	2,893	2,533	3,069	3,563	4,007	3,336
Criminal trials heard	1,118	1,202	1,218	1,424	1,321	1,258

(a) Decrease due to changes from November 1980 in jurisdiction of County Court.
(b) Total now refers to appellants, not cases as previously.

CRIMINAL MATTERS FINALISED, TYPE OF MATTER BY COURT *(a)*, VICTORIA, 1981 AND 1982

Crime subdivision	Children's Court		Magistrates' Court		Higher Courts		Total	
	1981	1982	1981	1982	1981	1982	1981	1982
Offences against the person	2,081	1,830	9,436	9,130	1,698	1,923	13,215	12,883
Robbery and extortion	99	115	140	118	426	409	665	642
Breaking and entering, fraud, and other theft	29,398	28,457	36,804	39,086	4,880	5,311	71,082	72,854
Property damage and environmental offences	1,574	1,580	2,872	3,024	248	301	4,694	4,905
Offences against good order	3,358	3,375	18,190	19,285	818	847	22,366	23,507
Drug offences	136	135	5,718	6,240	295	387	6,149	6,762
Other offences	34	24	749	861	17	6	800	891
Total	36,680	35,516	73,909	77,744	8,382	9,184	118,971	122,444

(a) Data contained in the above table were derived from administrative records using a new national crime classification introduced in 1981.

HIGHER COURTS, CRIMINAL MATTERS PROVEN BY TYPE OF MATTER AND TYPE OF PENALTY *(a)*, VICTORIA, 1981

Type of matter	Full-time detention	Periodic and weekend detention	Probation/ bond	Drug, alcohol rehabilitation	Loss/suspension of drivers' licence	Fine	Other	Total
Offences against the person	520	14	210	—	19	60	1	824
Robbery and extortion	259	8	75	12	2	2	—	358
Breaking and entering, fraud, and other theft	912	62	633	9	104	107	1	1,828
Property damage and environmental offences	44	11	57	6	—	26	—	144
Offences against good order	126	2	43	—	—	37	2	210
Drug offences	89	—	21	5	—	11	—	126
Other offences	3	—	1	1	—	—	—	5
Total	1,953	97	1,040	33	125	243	4	3,495

(a) Data contained in the above table were derived from administrative records using a new national crime classification introduced in 1981.

HIGHER COURTS, CRIMINAL MATTERS PROVEN BY TYPE OF MATTER AND TYPE OF PENALTY *(a)*, VICTORIA, 1982

Type of matter	Full-time detention	Periodic and weekend detention	Probation/ bond	Drug, alcohol rehabilitation	Loss/suspension of drivers' licence	Fine	Other	Total
Offences against the person	595	10	219	1	29	74	1	929
Robbery and extortion	263	7	78	9	1	11	—	369
Breaking and entering, fraud, and other theft	1,247	71	536	54	94	101	6	2,109
Property damage and environmental offences	68	12	77	2	3	20	—	182
Offences against good order	117	11	87	1	1	48	1	266
Drug offences	81	—	36	2	—	22	—	141
Other offences	1	—	—	—	—	—	—	1
Total	2,372	111	1,033	69	128	276	8	3,997

(a) See footnote to previous table.

Magistrates' Courts

Magistrates' Courts, which are Courts of record and are open Courts, have civil as well as criminal jurisdiction.

They are held at Melbourne, in the metropolitan area, and at many country centres throughout Victoria and are presided over by Stipendiary Magistrates (until 1 June, 1984, also by Justices of the Peace). Two or more divisions of the Court may sit simultaneously at one location. As at 30 June 1984, the Magistracy comprised a Chief Stipendiary Magistrate, his Deputy, and seventy-one other magistrates. In the past Stipendiary Magistrates were usually appointed from the ranks of legally qualified Clerks of Courts but the *Magistrates' Courts (Appointment of Magistrates) Act* 1984, which came into force on 17 October 1984 provided that appointments now be made from persons qualified to be admitted or who are admitted, to practice as a barrister and solicitor of the Supreme Court.

The Act also provides that magistrates are no longer subject to the provisions of the *Public Service Act* 1974 and are thus completely independent of the Executive, as are other members of the judiciary.

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. 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 are appointed from members of the community and act in an honorary capacity up to the age of seventy-two years. They are no longer entitled to hear and determine criminal matters and are limited to the attestation of documents, the issuing of certain types of legal process, and the hearing of bail applications.

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.

The Civil Jurisdiction of Magistrates' Courts comprises causes of action, both contract and tort, up to $5,000, and to $10,000 in claims for property damage arising out of the use of a motor vehicle.

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 in 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 where no means of enforcement are provided in any Act. In addition, Commonwealth laws have vested Federal jurisdiction in Magistrates' Courts 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 heard in a Magistrates' Court or at any place although usually in a Court room. 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 Magistrate is satisfied of a strong or probable presumption of guilt he directs the defendant to be tried in either the Supreme Court or County Court and may commit him to gaol or release him on bail. If the Magistrate is not so satisfied the defendant is discharged. Children's Courts (see pages 695-7) hear most offences by juveniles under the age of seventeen 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.

MAGISTRATES' COURTS, CASES OF A CIVIL NATURE, VICTORIA

Type of case	1976	1977	1978	1979	1980	1981
Civil cases –						
Number heard	146,850	133,919	133,204	139,812	141,970	186,747
Other cases –						
Garnishee	2,367	435	392	546	553	332
Fraud orders	5,105	3,686	3,748	4,233	4,647	3,433
Maintenance orders	5,374	7,427	7,416	8,629	7,573	5,469
Licenses and certificates	28,770	28,092	27,259	28,348	29,396	22,137
Show cause summonses	15,070	2,083	1,472	673	304	348
Landlord and tenant	2,372	2,227	2,241	2,303	2,348	2,332
Miscellaneous	22,545	23,678	22,165	20,036	15,174	27,609

MAGISTRATES' COURTS, CRIMINAL MATTERS PROVEN BY TYPE OF MATTER AND TYPE OF PENALTY, VICTORIA, 1981 (*a*)

Type of matter	Full-time detention	Periodic and weekend detention	Probation/ bond	Drug, alcohol rehabilitation	Loss/suspension of drivers' licence	Fine	Other	Total
Offences against the person	854	52	1,439	26	2	2,948	343	5,664
Robbery and extortion	1	—	—	—	—	3	—	4
Breaking and entering, fraud, and other theft	7,924	1,014	11,463	244	674	13,012	2,443	36,774
Property damage and environmental offences	223	13	546	4	3	2,066	172	3,027
Offences against good order	1,801	62	1,998	30	7	10,433	1,253	15,584
Drug offences	280	5	1,154	39	—	3,067	261	4,806
Other offences	26	—	98	—	—	548	13	685
Total	11,109	1,146	16,698	343	686	32,077	4,485	66,544

(*a*) Data contained in the above table were derived from administrative records using a new national crime classification introduced in 1981.

MAGISTRATES' COURTS, CRIMINAL MATTERS PROVEN BY TYPE OF MATTER AND TYPE OF PENALTY, VICTORIA, 1982 (*a*)

Type of matter	Full-time detention	Periodic and weekend detention	Probation/ bond	Drug, alcohol rehabilitation	Loss/suspension of drivers' licence	Fine	Other	Total
Offences against the person	843	76	1,371	41	2	2,506	352	5,191
Robbery and extortion	3	—	4	—	—	—	1	8
Breaking and entering, fraud, and other theft	7,991	1,371	13,608	383	1,185	12,902	2,983	40,423
Property damage and environmental offences	222	19	592	12	14	2,125	182	3,166
Offences against good order	1,768	47	2,285	22	32	11,110	1,230	16,494
Drug offences	249	5	1,268	38	3	3,041	298	4,902
Other offences	4	—	169	—	—	555	74	802
Total	11,080	1,518	19,297	496	1,236	32,239	5,120	70,986

(*a*) See footnote to previous table.

Children's Court

Children's Courts were established in Victoria in 1906, being, in essence, separate proceedings in what are now Magistrates' Courts. Today, the jurisdiction of Children's Courts consists of criminal and welfare proceedings. All criminal offences, other than homicide, may be tried by a Children's Court if the defendant is under seventeen years of age at the time of the commission of the alleged offence and under eighteen years of age at the time of determination. Indictable offences, i.e. those triable before a judge and jury, may be heard with the consent of a defendant (if aged fifteen or more) or his/her parent(s) (if under fifteen). Even with consent to summary determination the Court, in appropriate cases, may remit matters for trial, in which event the Children's Court becomes the preliminary examination (committal) forum.

The welfare jurisdiction consists of protection applications and irreconcilable difference applications. Protection applications may only be brought by authorised officers, i.e. members of the Victoria Police Force or nominated officers of the Children's Protection Society. Such applications are based on the criteria contained in section 31 of the *Community Welfare Services Act* 1970. Children's Courts have no guardianship, custody, adoption, or court wardship jurisdiction but a custodian or a child may approach the Court for assistance by bringing an irreconcilable difference application under section 34 of the *Community Welfare Services Act* 1970. Upon proof that there are substantial and presently irreconcilable differences between custodian and child the Court may utilise the dispositional alternatives available in protection applications.

The Melbourne Children's Court is the only geographically separate Children's Court, dealing exclusively with juvenile cases. Fourteen regional suburban Magistrates' Courts are gazetted as Children's Courts on a weekly, fortnightly, or monthly basis. Beyond the metropolitan area, regional County Courts sit as Children's Courts as gazetted, constituted by Stipendiary Magistrates. In the metropolitan area the magistrates based at Batman Avenue (currently three Stipendiary [Children's Court] Magistrates and two Children's Court Magistrates, one being the officer in charge of all Victorian Children's Courts), sit at Melbourne and all fourteen suburban Courts, occasionally assisted by two Honorary Children's Court Magistrates.

A fundamental feature of Children's Court proceedings is confidentiality. All proceedings are heard in camera with only the necessary parties permitted to be present. Media identification of parties and

proceedings is subject to strict prohibitive control and substantial constraints are placed upon references to proceedings against children in other jurisdictions. Proof of criminal offences is identical with that in other criminal Courts.

The philosophy of the Courts rests upon juvenile welfare, deterrence, and rehabilitation. While proceedings are less formal than those in courts dealing with adult offenders, offences must be strictly proved to the required standard, with all of the rights of a defendant preserved.

Upon proof of an offence or an application, the Court looks to the future welfare of the child. Offence disposition options include dismissal (without conviction), adjournment (without conviction), probation (without conviction), fine (with or without conviction), and 'bond', i.e. a recognisance to be of good behaviour (with or without conviction). In the most serious cases, upon conviction, a child under the age of fifteen years may be admitted to the care of the Department of Community Welfare Services or, if aged fifteen years or more, sentenced to detention in a youth training centre. The maximum sentence for an offence is two years, for more than one offence, or in the aggregate, three years.

Upon proof of an application the Court may adjourn the matter (with or without special conditions). Supervision orders (similar to probation orders but capable of including orders in respect of a parent) involve the family with officers of the Department of Community Welfare Services. Admission to the care of the Department results in the transfer of guardianship rights to the Director General of Community Welfare Services. Young persons who have received a substantial period of detention come under the authority of the Youth Parole Board.

Prior to disposition, it is common for the Court to request reports to be prepared by the officers of the Department of Community Welfare Services at the Children's Court Clinic. Honorary probation officers provide an invaluable service in supplementing the resources of the Department in the preparation of both pre-Court and pre-disposition reports.

Children's Court Clinic

The Children's Court Clinic is a statutory facility administered by the Health Commission of Victoria whose mandate over the past thirty-five years has been to provide a psycho-social consultancy service to the juvenile jurisdiction throughout Victoria. The multi-disciplinary team which comprises psychiatrists, social workers, psychologists, psychiatric nurses, and receptionists assess twelve per cent of children appearing before the Courts annually.

The majority of referrals involve complex situations, necessitating full assessment of the child and parents prior to recommendations being formulated in comprehensive reports to the Court. Clinic staff also provide continuing treatment to a significant number of children and families following assessment. Such services, which are available free of charge, include individual counselling and family therapy plus medical, neurological, and psychological investigations where indicated.

Within the major reception and youth training centres, staff from the Children's Court Clinic provide on-site psychiatric and psychological assessment and treatment services to the children detained.

On request, Clinic staff provide written psychiatric reports to the Youth Parole Board and the County Court on Appeal.

CHILDREN'S COURT, CRIMINAL MATTERS PROVEN BY TYPE OF MATTER AND TYPE OF PENALTY, VICTORIA, 1981 (*a*)

Type of matter	Full-time detention	Care/control of welfare department	Probation/ bond	Loss/suspension of drivers' licence	Fine	Other	Total
Offences against the person	162	83	406	1	203	168	1,023
Robbery and extortion	19	17	21	—	10	5	72
Breaking and entering, fraud, and other theft	2,458	2,606	6,595	60	1,485	1,994	15,198
Property damage and environmental offences	67	96	282	1	257	100	803
Offences against good order	349	127	542	—	411	306	1,735
Drug offences	6	10	25	—	19	24	84
Other offences	1	9	10	—	—	2	22
Total	3,062	2,948	7,881	62	2,385	2,599	18,937

(a) Data contained in the above table were derived from administrative records using a new national crime classification introduced in 1981.

CHILDREN'S COURT, CRIMINAL MATTERS PROVEN BY TYPE OF MATTER AND TYPE OF PENALTY, VICTORIA, 1982, (*a*)

Type of matter	Full-time detention	Care/control of welfare department	Probation/ bond	Loss/suspension of drivers' licence	Fine	Other	Total
Offences against the person	162	58	368	—	199	168	955
Robbery and extortion	31	10	26	—	11	5	83
Breaking and entering, fraud, and other theft	2,128	2,053	6,959	76	1,269	2,160	14,645
Property damage and environmental offences	77	97	351	—	190	128	843
Offences against good order	291	106	482	1	471	285	1,636
Drug offences	4	1	33	—	21	17	76
Other offences	—	2	2	—	5	3	12
Total	2,693	2,327	8,221	77	2,166	2,766	18,250

(*a*) See footnote previous table.

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.

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 coroner may direct after hearing evidence, that a person or persons should stand their trial for the offences of murder, manslaughter, culpable driving, infanticide, and arson should that evidence so indicate.

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 Coroner's 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 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.

MELBOURNE CORONER'S COURT, INQUESTS HELD

Year	Number of inquests held
1978	1,361
1979	1,445
1980	1,278
1981	1,450
1982	1,525
1983	1,421

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.

COMMITTALS BY CORONERS, VICTORIA

Year	Murder, manslaughter, infanticide, and arson		Culpable driving
	Males	Females	Persons *(a)*
1978	37	6	34
1979	35	7	39
1980	45	4	40
1981	24	n.p.	27
1982	54	7	32
1983	42	11	51

(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.

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 1984, there were 890 members of the Bar, including 71 women, in full-time active practice. Four 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. Beside 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 seventy Queen's Counsel practising at the Victorian Bar in August 1984.

In August 1984, nine barristers' clerks acted for varying numbers of practising barristers, ranging from about forty to about 128 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 director and 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 barristers and solicitors 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, eighteen elected members, the presidents of each of the nine country law associations, and representatives of the five suburban law associations. The Council has a large number of 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 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 defects in the law or legal procedures, and the Council makes representations to the Attorney-General or other appropriate authority for amendments and reforms.

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 three months after the statutory time; and wilful or reckless non-compliance with the rules and regulations governing the practice of 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 hearing: for a preliminary hearing, the President of the Institute assigns one person; for a summary hearing, three persons, one of whom is a lay member; and for a full hearing, five persons, two of whom are lay members. 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 three 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. 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:

LAW REFORM COMMISSIONER, REPORTS ISSUED, VICTORIA

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)	Compellabilty 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 *Crimes Act* 1958 and section 25 of the *Evidence Act* 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, persons are granted free legal assistance if they have completed an application form and are assessed as being eligible for legal assistance on the basis of their financial situation and the reasonableness of providing assistance in the particular case. In some cases, an applicant may be required to pay a contribution towards the cost of the legal assistance. This may be at the time the assistance is granted or at any time while the assistance is being provided and, in particular, if the applicant recovers money or property as a result of the provision of legal assistance.

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.

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 is now

offered, and occasionally in co-operation with other bodies such as the Law Institute of Victoria, the University Law Schools, and the accounting profession.

The Institute's statute, however, always envisaged a wider role for it, including the conduct of 'courses for training in the law'. The Institute has established a course of practical training as an alternative to articles of clerkship. A pilot course was run in 1974, and the first full-time course in 1975, since when a course has been conducted each year for about 120 law graduates.

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

The course of practical training is a full-time course extending over a period of seven 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 instruction and unstructured 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 conducted by the students involving the co-operation of government and semi-government offices, courts, registries, municipal councils, and even an insurance company.

While courses such as these are comparatively new in the field of legal education, they are conducted in all Australian States, except Western Australia, and in the Australian Capital Territory. Australia is recognised internationally as a pioneer in legal practice courses. Countries around the world have modelled their courses on those in Australia, in particular those in the States of Victoria and New South Wales.

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 publication of material connected with carrying out the objects of the Foundation.

Further references: ***Victorian Year Book*** **1975, pp. 860-1; 1984, pp. 619-22, 624-31**

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 two Deputy Secretaries.

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, provides for payment from consolidated revenue 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 reappointment. 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 junction with the National Companies and Securities Commission (NCSC) is responsible for the administration of laws relating to companies and the securities industry. The 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 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 NCSC 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 NCSC is responsible for the overall administration of the scheme, subject to the approval of the Ministerial Council for Companies and Securities. Existing State and Territory administrations act as delegates of the NCSC 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, the *Associations Incorporation Act* 1981 and the *Trustee Companies Act* 1958. In that capacity, the Office registers business names, incorporates not-for-profit associations and oversees the operations of trustee companies. Legislation relating to business names, associations, and trustee companies does not come within the Co-operative Companies and Securities Scheme.

Court Reporting Branch

The Court Reporting Branch arranges the reporting and, as required, the transcripts of proceedings in courts of all jurisdictions in Victoria.

Crown Solicitor's Office

The Crown Solicitor is the solicitor to the Executive Government of Victoria, to some other statutory tribunals and authorities, and in some circumstances, acts as solicitor to officers employed in various government services. He provides a complete range of legal services to clients ranging from

the provision of legal advice to the conduct of all manner of prosecutions and litigation and includes also the provision of drafting and conveyancing services. To provide these services, it has been necessary to arrange for the legal officers employed in this office to deal with particular services. In general terms there are now four branches or sections, i.e., an Advisory Branch, a Common Law Branch, a Conveyancing Branch, and a Summary Prosecutions Branch, and three separate office locations in particular departments which provide some, but not all, legal services to those departments.

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, reinstatement, 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 Legal and Constitutional 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.

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

This Tribunal was established by the *Criminal Injuries Compensation Act* 1972 and consists of a person of not less than seven years standing as a barrister and solicitor. The 1972 Act continues to govern applications arising after its implementation and arising before 21 March, 1984. A limit of $10,000 in respect of such applications became operative on 28 October 1981.

Save as aforesaid, the 1972 Act was repealed and replaced by the *Criminal Injuries Compensation Act* 1983 and the *Criminal Injuries Compensation Regulations* 1984 on 21 March 1984 which apply to claims arising on or after that date. This legislation imposes separate limits as to the different heads of compensation — expenses incurred, impairment of earning capacity, pain and suffering, and loss of dependancy on death. A maximum total award of $21,600 will be available in some cases.

With a limited exception arising under section 15(1) of the 1983 Act, claims are confined to those based on personal injuries, and claims based on loss of or damage to property are excluded.

CRIMES COMPENSATION TRIBUNAL, SUMMARY OF PROCEEDINGS *(a)*, VICTORIA

Item	1979	1980	1981	1982	1983	1984
Applications pending *(b)*	321	400	639	981	1,595	2,159
Further applications received *(c)*	1,495	1,861	2,339	2,581	2,579	3,342
Final awards	1,377	1,596	1,703	1,797	1,960	2,085
Applications refused or withdrawn	39	26	68	84	76	82
Applications pending *(a)*	400	639	981	1,594	2,159	3,394
Total compensation awarded $	1,346,052	1,885,310	2,331,100	2,502,157	3,397,385	3,840,625
Average award of compensation $	978	1,181	1,369	1,392	1,733	1,842

(a) At 30 June.
(b) At 1 July of previous year.
(c) To 30 June.

Government Shorthand Writer's Office

The Government Shorthand Writer's Office reports and produces verbatim transcripts of proceedings before Royal Commissions and Boards of Inquiry, the Industrial Relations Commission of Victoria and 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.

Further reference: Law Department, *Victorian Year Book*, 1984, pp. 633-5

Small Claims Tribunals

Small Claims Tribunals, established under the *Small Claims Tribunals 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 $3,000.

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 open to the public 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 four full-time referees and seven part-time referees.

Since the tribunals came into operation on 4 February 1974 until 30 June 1984, a total of 24,844 claims have been lodged for determination.

SMALL CLAIMS TRIBUNALS, NUMBER OF CLAIMS DETERMINED, VICTORIA

Classification	1981-82		1982-83	
	Number	Per cent	Number	Per cent
Food and beverages	n.p.	n.p.	1	0.03
Clothing, footwear, and drapery	182	7.51	221	6.23
Consumer durables	474	19.56	701	19.76
Motor vehicles and other transport equipment	508	20.96	755	21.28
Building and construction	651	26.87	811	22.86
Miscellaneous products	147	6.07	205	5.77
Transport and energy services	98	4.04	157	4.43
Insurance and finance	29	1.20	138	3.89
Real estate and accommodation	n.p.	n.p.	22	0.62
Miscellaneous services	319	13.17	537	15.14
Total	2,423	100.00	3,548	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*.)

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 rewriting 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 licenses 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.

NUMBER OF LIQUOR LICENCES, VICTORIA

Type of licence	1978	1979	1980	1981	1982	1983
Hotelkeeper	1,435	1,432	1,431	1,431	1,431	1,430
Club	459	469	479	496	517	534
Retail bottled liquor	731	744	751	766	769	773
Wholesale liquor merchant	102	105	109	114	112	112
Australian wine	13	13	13	13	13	13
Vigneron	65	67	70	85	89	97
Brewer	7	7	7	7	7	7
Restaurant	287	294	317	345	347	377
Cabaret	29	33	42	47	49	52
Theatre	5	5	4	4	4	4
Cider tavern	n.p.	2	3	4	7	7
Residential	n.p.	3	3	4	6	10
Tourist facility	12	14	16	20	28	29
Convention facility	—	—	1	1	1	1

NUMBER OF LIQUOR LICENCES, VICTORIA – *continued*

Type of licence	1978	1979	1980	1981	1982	1983
Canteen	—	—	7	7	7	7
Cultural centre	—	—	—	1	2	2
Ships provedores	—	—	—	—	4	5
Total	3,149	3,188	3,253	3,345	3,393	3,460

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

Racing legislation

The *Racing Act* 1958 regulates horse, harness, and greyhound racing. Under the Act the control of harness and greyhound racing is vested in the Harness Racing Board and the Greyhound 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.

RACING AND HARNESS RACING MEETINGS, VICTORIA

Particulars	Year ended 31 July –					
	1979	1980	1981	1982	1983	1984
	RACING					
Number of meetings –						
Metropolitan courses	84	84	83	83	83	96
Other courses	398	397	427	433	394	401
Number of events –						
Metropolitan courses	702	688	672	671	677	782
Other courses	3,138	3,124	3,344	3,399	3,083	3,211
Amount of stakes –						
Metropolitan courses ($'000)	7,763	8,560	8,883	10,068	11,752	12,794
Other courses ($'000)	3,758	4,062	4,307	5,014	5,697	6,968
	HARNESS RACING					
Number of meetings –						
Metropolitan courses	55	59	60	60	60	73
Other courses	268	268	268	264	281	267
Number of events –						
Metropolitan courses	426	443	474	471	480	610
Other courses	2,360	2,164	2,361	2,332	2,486	2,346
Amount of stakes –						
Metropolitan courses ($'000)	1,934	2,305	2,655	3,069	3,419	3,837
Other courses ($'000)	2,398	2,511	2,882	3,180	3,663	3,680

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.

BANKRUPTCIES, VICTORIA

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	r1,274	5	235	r1,514
1981-82	1,289	1	274	1,564
		LIABILITIES ($'000)		
1976-77	7,555	—	10,479	18,034
1977-78	14,890	43	5,466	20,399
1978-79	17,272	68	8,525	25,865
1979-80	33,509	44	10,048	43,601
1980-81	39,529	409	17,420	57,358
1981-82	41,157	90	53,490	94,737
		ASSETS ($'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
1981-82	4,935	28	6,607	11,570

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 been published by the Victorian Government Printer. A more detailed publication on this subject is 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

To discharge its obligation of providing an effective level of service to the community, it is essential that the Force establishment be brought to a level commensurate with community demand, and that level must be maintained by a recruiting and training programme designed to meet the predicted demands of population growth and losses of personnel from the Force. The authorised strength of the Force at 30 June 1984 was 8,500, and the actual strength was 8,365.

The Police Academy at Glen Waverley undertakes training of recruits aged between eighteen and a half years and thirty-four years inclusive, who undergo two years probationary training. The first eighteen weeks at the Academy constitute the initial basis of training followed by further training courses at selected police stations and supportive branches of the Force.

Police in-service training and promotional examinations are conducted by the Force for members wishing to advance in their career. There are thirty-three external courses and seventy internal courses available to members. Tertiary institutions such as the University of Melbourne, Phillip Institute of Technology, and Chisholm Institute of Technology provide venues for advanced study.

Crime prevention and detection techniques

A successful initiative in the fight against crime has been the development of the Bureau of Criminal Intelligence. However, while it has, in many cases, given sound direction to the investigator, it has also exposed more clearly, the nature and extent of organised crime.

The twin engined Aerospatiale helicopter of the Police Air Wing provides a reactive response to operational needs. This aircraft has a twenty-four hours a day operational capability and is fully instrumented for flying in adverse weather conditions.

Communications are constantly being improved with consideration of future command and control systems incorporating computer aided dispatch. Planned changeover to a UHF radio network is expected to become operational in the metropolitan area in 1984-85, resulting in improved communications. The present communications complex at Russell Street is a Total Command and Control centre encompassing advanced technology in all modes of communication including radio, telephone, computer message switching, and facsimile.

Computers now provide invaluable service to both operational and administrative personnel with a network of VDU terminals throughout the State providing information, including vehicle registration particulars, stolen motor vehicle details, and criminal record information. Links have been established with the NSW Police computer and development of further interstate links is well advanced.

Forensic Science plays a significant role in the detection of criminal offenders. The State Forensic Science Laboratory has the responsibility of providing scientific aid to all sections of the force and to outside organisations and individuals. The laboratory is required to develop and maintain chemical,

biological, serological, biochemical, pharmacological, physical, document examination, firearm identification, photographic, and crime scene search facilities in keeping with current scientific knowledge. It also provides a "Disaster Victim Identification" service.

The laboratory is now an autonomous establishment directed by a scientist who controls all personnel and develops and determines scientific methodology within the laboratory. The executive police involvement is directed towards fulfilling the administrative needs of the laboratory in order to ensure that it has the capacity to provide an adequate scientific response to the police organisation, to the community at large and to satisfy the needs of the criminal justice system. The major aim is to ensure that all scientific evidence is produced at a prosecution. Following completion of stage 1 of the new Laboratory at Macleod, stage 2 has commenced with completion envisaged in early 1986.

Road toll

Although the Traffic Department has responsibility for traffic law enforcement, all operational members participate as their commitment to other policing duties permit. Owing to modern social demands and complexity of traffic laws, traffic policing requires special training and equipment such as high speed pursuit driving and interception skills, use and maintenance of speed measuring equipment, vehicles inspection, road crash investigation, enforcement of laws relating to the use of heavy commercial vehicles, and preparation of detailed reports for coroner's inquiries and other court documents.

Concentrated efforts to reduce fatalities on the State's roads, effective use of available resources together with media co-operation have assisted in making the public more aware of the trauma on the State's roads.

Research and development

Many of the tasks performed by the Research and Development Department can only be successfully carried out because of the extensive operational background of its personnel. All areas of the Force operations are represented, which enables a wide spectrum of skills to be utilised in performing the function of providing a service to operational members.

A notable achievement of the Department during 1983-84 was the introduction of 'Neighbourhood Watch', a community based crime prevention initiative particularly directed to a reduction in the number of house burglaries.

Liaison with community groups was fostered by members of the Crime Car Squads in the Metropolitan Districts and by the end of June 1984, sixteen Neighbourhood Watch areas were operating involving approximately 11,000 residences and in excess of 30,000 people.

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; Police/Medical Officers' Liaison Committee; and the Aboriginal/Police Liaison Committee.

Expenditure

The operational expenses of the Victoria Police Force during 1982-83 were $288.9m and the

expenditure on capital and maintenance works was $10.7m. Victorian Government expenditure on the operations of the Victoria Police Force represents a significant element of the annual Victorian Budget allocations to government departments.

POLICE FORCE AT 30 JUNE, VICTORIA

Particulars	1979	1980	1981	1982	1983	1984
Authorised strength	7,500	8,000	8,050	8,200	8,500	8,500
Actual strength *(a)*	7,468	7,698	7,986	8,198	8,364	8,365
C.I.B., etc. *(b)*	1,058	1,114	1,223	1,284	1,181	1,287
Police-women	493	554	568	666	666	801
Cadets *(c)*	337	262	84	—	—	—
Reservists	142	141	126	131	145	142

(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; 1984, pp. 631-3

Office of Corrections

Introduction

The Office of Corrections was established during the latter half of 1983, in order to strengthen the administration and delivery of adult correctional services, of both a custodial (prisons) and non-custodial nature, in Victoria. The functions of the Office had previously been performed by the Department of Community Welfare Services. The Office is responsible to the Minister for Community Welfare Services.

The Director-General of Corrections was appointed on 1 October 1983 and commenced duty on 10 October 1983. The *Community Welfare Services (Director-General of Corrections) Act* 1983 came into operation on 22 November 1983, giving legislative effect to the partitioning of the Department of Community Welfare Services, the establishment of the Office of Corrections, and the Director-General of Corrections. It also allowed for a number of provisions necessary to maintain the management of corrective services. The Office became fully separate from the Department of Community Welfare Services on 1 February 1984 when it assumed full responsibility for the delivery of all community-based correctional programmes to adult offenders.

The Office of Corrections aims to provide an integrated system of community-based and custodial correctional services for convicted and unconvicted adult offenders in a manner which is humane, just, constructive, contemporary, and cost-effective. Juvenile correction remains the responsibility of the Director-General of Community Welfare Services.

Major reports prepared during 1983 have underpinned the establishment and development of the Office of Corrections. In response to a series of prison escapes and other incidents early in 1983, the Victorian Government commissioned reports from Mr. J.D. Henderson, a United States Prison Consultant, and Commander P.H. Bennett of the Victoria Police. These reports stated that Victoria's prison system was long overdue for redevelopment and included a number of recommendations to improve prison security. The Henderson Report also recommended that a comprehensive master plan be prepared for Victorian corrections, outlining the objectives, strategies, and costs of updating the system. Subsequently, Neilson Associates (consultants) were commissioned by the Victorian Government in August 1983 to prepare a wide-ranging Corrections Master Plan. The resultant 600 page report and nineteen appendices made ninety-three recommendations to upgrade, develop, and promote correctional services to a suitable contemporary standard. The Plan was endorsed in principle by the Victorian Government in February 1984, and a commitment made to the implementation of Phase 1 of the Plan.

The Office of Corrections is organised into four Divisions – Prisons, Community-Based Corrections, Strategic Services, and Management Services. The responsibilities of each Division are outlined in the following pages.

Prisons Division

The Prisons Division is responsible for the management of Victoria's prisons, prisoner classification, and delivery of prison programmes in a manner consistent with the maintenance of

public safety and confidence, and humane prisoner care. It has assumed the responsibilities of the former Correctional Services Division in the Department of Community Welfare Services, with the exception of the Attendance Centres programme, which is now overseen by the Community-Based Corrections Division. The Division encompasses a Headquarters Directorate, led by the Director of the Division, and eleven prison sites dispersed throughout the State.

Following the release of the Corrections Master Plan, a complete overhaul of Victoria's prison system will be undertaken over the next decade. Both the accommodation facilities available and the quality and range of support services and prisoner programmes essential for the efficient and effective functioning of prisons are to be substantially upgraded.

Headquarters Directorate

A prime concern of the new Division has been the development of an environment which will strengthen the management of prisons in Victoria. In response to the inadequate management structures identified in the former Correctional Services Division, two major changes have been implemented. First, Prison Governors have been made directly responsible to the Director of the Division and given new delegations of authority to strengthen their autonomy and accountability. Secondly, specialist advisers on prisoner classification and placement, prison inspection and investigation, and prisoner programmes have been appointed to upgrade the quality of support services available to the Director and Governors. These advisers are centrally located in the Headquarters Directorate in three units – Prisoner Classification, Prison Inspection, and Prisoner Program Co-ordination.

The Classification Section is responsible for the placement of and programme planning for all prisoners in Victoria. The three key prisoner management programmes operated are the State wide classification system, the temporary leave programme, and the remission system. The objectives of the Section are to confine prisoners in the least restrictive prison environment for which they qualify, and to provide a team which will monitor the progress of prisoners concerning placement and programme plans. The centralised State wide prisoner classification process is located at Pentridge Prison, where prisoners serving sentences of imprisonment of six months or more, and those eligible for parole, are interviewed by the Classification Committee, which endeavours to place them in the most appropriate institution.

The Inspections Unit is responsible for inspecting the building and staffing establishment of prisons and for monitoring the delegations to Prison Governors. An Investigations Unit undertakes and reports on investigative work in relation to substantial incidents and allegations which involve prisoners and/or prison officers. It is overseen by the Superintendent of the Inspections Unit. The objectives of the Unit are to co-ordinate investigations of breaches of discipline and procedures within the prisons system; regularly inspect and monitor the operations and management of prisons to ensure that facilities, procedures, and practices conform to standards and guidelines which optimise security and custodial aspects of prison management; and advise the Director of Prisons on all aspects of prison management.

Support services provided to prisoners cover physical and mental health, education and vocational training, recreational activities and hobbies, counselling and welfare, religion, visiting and temporary leave programmes, and employment. A Prisoner Programs Co-ordination Unit has been established within the Directorate to develop, co-ordinate, and review the delivery of these programmes and services.

The Unit works with the Classification Section in administering the Temporary Leave Program. It liaises with the Health Commission and Education Department on matters concerning the services that each provides. Liaison and contractual arrangements have been made with the new Victorian Prison Industries Commission. The *Victorian Prison Industries Commission Act* 1983 was proclaimed in July 1984, following agreement on the respective areas of control and responsibility of the Office of Corrections and the Commission. The Commission has been established to effectively and efficiently plan and manage all prison industries on an economically viable basis.

The Unit has primarily been involved in reviewing Departmental policy on external bodies providing services such as health, mental health, and education to prisoners. Efforts are being made to extend and enhance educational and employment opportunities, health services, and recreational facilities across the entire prison system.

Individual prisons

The Pentridge Prison site, which holds approximately half the total prison population in the State, is

the focus of the centralised classification process and is the main reception and remand prison in Victoria. It accommodates the State's highest risk security prisoners, and those requiring protection, special supervision, and disciplinary management. It has a prison hospital and a psychiatric division to provide specialist health services. The Pentridge Prison site was partitioned into two separate maximum security prisons in August 1984, with two autonomous management structures each headed by a Governor, superseding the previous structure headed by a Superintendent.

The facilities and land now titled *Her Majesty's Prison, Pentridge* comprise the former Central and Northern Sub-Prisons, Pentridge, with a capacity of 416 male prisoners and 43 female prisoners, split into the following Divisions: 'A' Division (mainly for offenders serving long terms), 'B' Division (single cell accommodation for long-term prisoners), 'B' Annexe (for female prisoners, both convicted and unconvicted), 'E' Division (dormitory accommodation for medium-term prisoners), 'H' Division (a short-term assessment unit for prisoners considered to be security risks, to have protection needs, or who are facing charges for breaches of discipline), and 'J' Division (for long-term, well-behaved prisoners). The Pentridge Hospital is also geographically located within the Pentridge Prison, and can accommodate up to twenty prisoner in-patients. The building has been fitted with the most modern equipment available and is staffed by both medical and custodial personnel.

The facilities and land now titled *Her Majesty's Metropolitan Reception Prison* consist of the former Southern Sub-Prison, Pentridge and the Jika Jika High Security Unit, with a capacity of 561 male prisoners and six female prisoners, split into the following Divisions: 'D' Division (for trial and remand prisoners), 'F' Division (for remand prisoners), 'G' Division (a psychiatric division with a medical clinic), and 'K' Division (formerly known as the Jika Jika High Security Unit, a modern high security unit providing fifty-three single cells for both male and female prisoners).

Prisoners on the Pentridge Prison site can be employed in a wide variety of prison industries, and industry products are supplied to outside customers as well as to government departments. Pentridge industries include the manufacture of number plates for motor vehicles, brush and broom making, a bakery, the tailoring of jackets and jeans, printing, a laundry, and an engineering shop for maintenance work.

Ararat Prison is the largest prison in Victoria outside the Melbourne metropolitan area, with a capacity of 215 prisoners. It is a modern medium-security prison in which most of the prisoners are housed in four-bed cells. Industries conducted at the prison include the manufacture of tubular steel products, silk-screen printing, forestry, signwriting, mat-making, and market gardening. *Beechworth Prison* is a medium-security prison of the old walled type, with a capacity of 112 prisoners. Most prisoners are housed in single cells. Prisoners take part in a variety of community service projects. The prison also has a carpenter's shop, a farm, and a large commercial pine plantation. *Bendigo Prison* is also a medium-security prison of the old walled type, with a capacity of 86 prisoners. Slightly more than half the prisoners are housed in single cells, with the remainder being housed in either three-bed or four-bed dormitories. Prisoners take part in community service projects, and the prison has a well-equipped sheetmetal work industry. *Castlemaine Prison* is another medium-security prison of the old walled type, with a capacity of 95 prisoners. Most prisoners are housed in single cells. Some Castlemaine prisoners work outside the prison for community organisations during the day, while mat-making is the main industry undertaken inside the prison. Vegetable gardening also provides employment for a number of prisoners. *Dhurringile Prison* is a minimum-security prison farm, with a capacity of 72 prisoners. Most prisoners are housed in dormitories, ranging in size from three-bed dormitories to an eleven-bed dormitory. Prisoners work on the farm, in the orchard, or in the cannery.

Geelong Prison is a medium-security prison of the old walled type, with a capacity of 120 prisoners. Most prisoners are housed in single cells. Geelong's main prison industry is tailoring, and articles of clothing are manufactured for use in other institutions. *Morwell River Prison* is a minimum-security prison, with a capacity of 78 prisoners. Prisoners are accommodated in former forestry camp two-man cabins, and engage in forestry work from seed raising to tree felling. *Sale Prison* is a medium-security prison of the old walled type, with a capacity of 50 prisoners. Twenty of the prisoners are housed in single cells, with the remainder being located in dormitory accommodation. Nail and allied wire manufacturing is the major industry at Sale, while a number of prisoners work outside the prison. *Won Wron Prison* is a minimum-security prison, with a capacity of 90 prisoners. Prisoners are housed in three-bed dormitories, and engage in forestry work from seed raising to tree felling.

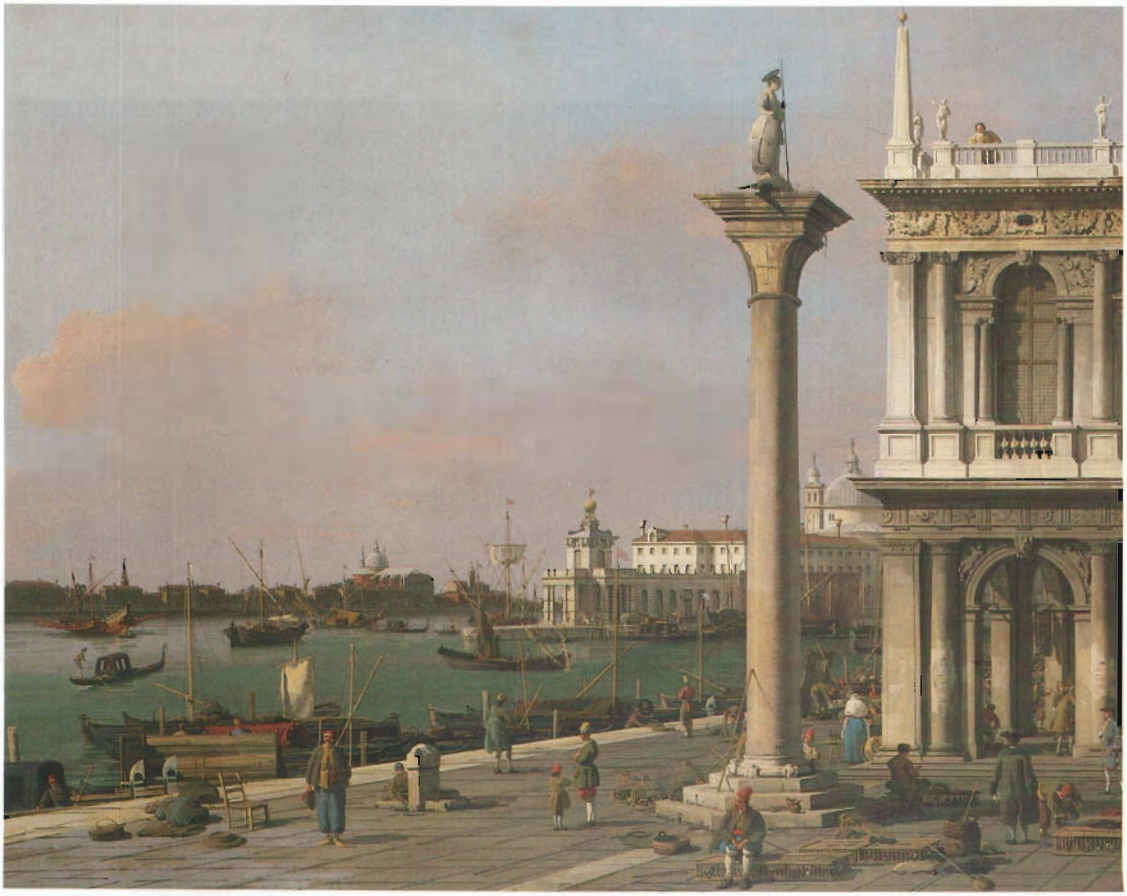
Fairlea Prison is a medium-security prison for women, located in the Melbourne suburb of Fairfield, with a current capacity of 30 prisoners. All prisoners are housed in single cells. At Fairlea,

The Victorian Arts Centre was completed in three stages – The National Gallery of Victoria, the Theatres building (topped with a 115 metre spire), and the Melbourne Concert Hall (foreground). The final stage of the Centre – the Theatres – was officially opened on 29 October 1984.

Victorian Arts Centre Trust

(Below) The Circle Foyer of the State Theatre. The auditorium colour scheme is dominated by rich reds and the ceiling is decorated with thousands of tiny brass domes.

Victorian Arts Centre Trust



Giovanni Antonio Canaletto
(Italian 1697-1768)
Bacino di S. Marco: From the Piazzetta, 1735-40
Oil on canvas
132 × 165cm.
Felton Bequest 1985

National Gallery of Victoria

Rembrandt Harmensz Van Rijn
(Dutch 1606-1669)
Portrait of a Man, 1667
Oil on canvas
108.9 × 92.7cm.
Felton Bequest 1951

National Gallery of Victoria

women prisoners can work in the laundry, or can be employed in the kitchen, or engaged in doing general cleaning work. Vegetable and flower gardens are maintained by the prisoners, and the women make and mend their own clothes. The prison has undergone substantial physical change since a major fire in February 1982. Demolition of most of the old unused building wings was completed in March 1984. It is proposed to install self-contained demountable buildings to provide accommodation for additional prisoners during 1984-85. Fairlea Prison is currently the only Victorian prison which has suitable accommodation facilities for the care of children.

Community-Based Corrections Division

The Community-Based Corrections Division is responsible for the operation of all non-custodial correctional programmes for adult offenders in Victoria, through a system of twelve regional centres and six attendance centres.

For the first time, responsibility for the delivery of all non-custodial programmes has been integrated within the one Division. In the Department of Community Welfare Services, Attendance Centres were administered by the former Correctional Services Division, while other non-custodial programmes were overseen by the former Correctional Field Services Unit and delivered by regional offices of the Department of Community Welfare Services which also had significant responsibilities for young offenders and other welfare clients.

Not only have the programmes been administratively integrated, but planning is also well underway to extend the coverage of all the programmes State wide, given the Victorian Government's commitment to imprisonment representing an option of last resort for convicted adult offenders. Currently, only the long-standing probation and parole programmes are available throughout the State. Comprehensive State wide coverage of all programmes is expected to be achieved during 1984-85, as a result of the high priority accorded to the areas of responsibility of the Division. State wide coverage will involve substantial expansion of the staffing and other resources available for the operation of community-based correctional programmes.

The Community-Based Corrections Division was established in January 1984, and assumed responsibility for the delivery of all community-based correctional programmes to adult offenders on 1 February 1984. A basic organisational principle has been to integrate all community-based correctional programmes in each region so that the most appropriate programmes can be recommended for each offender. This integration will enhance the credibility of the various programmes with the courts. To facilitate this integration, each region has a regional manager in charge of all adult community corrections programmes. The twelve regional managers report to the Director of Community-Based Corrections, and a Chief Probation and Parole Officer has been appointed to assist the Director. The various programmes available are described below.

Court advisory services

The Division provides advice on request to all adult Courts in relation to the sentencing of offenders. Staff located in regional offices perform this function for Magistrates' Courts. The Adult Court Advisory Unit, located in South Melbourne, provides a specialist service to the County and Supreme Courts.

With the development of a range of supervised non-custodial programmes, the need for Court advice – particularly on the suitability of individual offenders for specific programmes and the availability of programmes – has increased significantly. Accordingly, a review of the Division's operations in this area is being undertaken, and it is anticipated that more comprehensive and effective services to the Courts will become available in 1984-85. The aim of the enhanced services will be to provide prompt information to the Courts on the backgrounds of offenders, appropriate Office of Corrections programmes for offenders, and the availability of such programmes.

Attendance Centre Orders

Since mid-1976 Attendance Centre Orders have provided the Courts with a non-custodial sentencing option to impose a period of imprisonment to be served in the community, under sections 36-43 of the *Penalties and Sentences Act* 1981. The Attendance Centre Order combines restitution in the form of community work with a requirement for regular attendance at an attendance centre. The aim of the programme is to provide a punishment option which allows the offender to remain in the community, perform general community work, and aid in personal development through structured intensive supervision. Attendance Centre Orders are for a minimum of one month to a maximum of twelve months.

Typically, attenders spend two three-hour evening sessions at a particular centre each week during which they are encouraged to involve themselves in the variety of courses available. These include photography, home maintenance, accounting, furniture making, welding, and computer programming. Attenders with personal or domestic problems are counselled by welfare officers at the centre or referred to outside agencies. These include marriage guidance counsellors, Alcoholics Anonymous, and similar organisations. Attenders are required to participate in programmes of unpaid work of benefit to the community each Saturday. Staff arrange and supervise work projects. Attendance Centre projects range from fire fighting to home maintenance for pensioners and needy individuals, to the construction of aids for handicapped persons, and to gardening and beautification programmes. The beneficiaries of the scheme include children's homes, hospitals, schools, handicapped persons, pensioners, the National Trust of Australia (Victoria), and local councils.

Currently, there are Attendance Centres in only six of the twelve regions in the State, with a maximum overall capacity of 360 offenders. There were 302 offenders subject to the Attendance Centre Orders at the end of June 1984. It is intended that the programme will be extended State wide during 1984-85. Centres operating at 30 June 1984 were the Barwon Attendance Centre at Geelong, the Western Suburbs Attendance Centre at Spotswood, the Eastern Suburbs Attendance Centre at Blackburn, the Southern Suburbs Attendance Centre at Prahran, the Northern Suburbs Attendance Centre at Thornbury, and the Mallee/Loddon-Campaspe Attendance Centre at Bendigo.

Community Service Orders

The Community Service Order Scheme provides a sentencing alternative to imprisonment whereby the courts can direct offenders to make generalised restitution by performing from twenty to 360 hours of community service work. Under section 14 of the *Penalties and Sentences Act* 1981, a Community Service Order may be made in respect of any person convicted of an offence other than treason or murder, even where a period of imprisonment is mandatory, and in default of payment of fines. The scheme provides a low cost alternative to imprisonment by providing a means of punishing offenders without sending them to prison.

Therefore, the courts can use imprisonment as a last resort option, with consequent social benefits and economic savings. This sentencing alternative deprives persons on the scheme of a significant amount of their leisure time. They have to use their free time in a constructive way for the benefit of the community.

The court is responsible for assessing offenders for Community Service Orders from the point of view of personal characteristics and the nature of the offence. Offenders admitted to this scheme must agree to participate, have some degree of stability in their life so that they are able to undertake community work, and be likely to benefit from community service work. Offenders are not admitted if they are highly disturbed, heavily dependent on drugs, or if they have committed serious sexual offences.

A notable feature of the scheme is the policy of separating offenders and placing them, where possible, with groups of volunteers on work projects. This has contributed to the success of the scheme and minimised the management problems which can occur with offenders working in groups.

Counselling is not a requirement of the scheme – the obligation on the offender is to perform the number of hours of work directed by the court. The scheme provides tangible benefits to the community in terms of the work undertaken by offenders; examples include painting, gardening, handyman tasks, and art and craft instruction. Work projects are accepted in consultation with a representative from the Victorian Trades Hall Council, in order to ensure that work undertaken does not adversely affect paid employment opportunities.

The scheme has been piloted in the Southern Region of Melbourne since September 1982. There were forty-two offenders subject to Community Service Orders at the end of June 1984. So far, community service work in the Southern Region has been undertaken for the Southern Regional Association for the Disabled, handicapped children's organisations, the elderly, and lifesaving clubs. In the first half of 1984, the policies and operating procedures of the scheme were refined on the basis of the experience gained since September 1982. The scheme can now be extended to other regions as a well-tested programme when resources become available. It is expected that the scheme will be extended State wide during 1984-85.

Probation Orders

When a person is convicted in any court of an offence for which imprisonment may be imposed, the court may make a Probation Order, under section 508 of the *Crimes Act* 1958. Adult offenders can be

released on probation by the courts for periods of between one and five years, during which time they receive supervision from a probation officer and are required to adhere to the conditions of the Probation Order. Both Stipendiary and Honorary (or volunteer) Probation Officers are used.

The primary purpose of probation is to provide a non-custodial court sanction which gives offenders the opportunity to prove their ability to live in the community without the need for further controls. Failure to adhere to the conditions of the Probation Order may result in the breach of probation and the probationer's return to court to be sentenced for the original offence.

An offender admitted to probation consents to comply with certain conditions. These conditions are: to report to the probation service within forty-eight hours of appearing in court; not to break the law; to carry out the lawful instructions of the probation officer; to report and receive visits as directed by the probation officer; and to notify the probation officer within forty-eight hours of any change of address or change of employment during the period of probation. Special conditions may be added by the court, for example, directing abstinence from liquor, attendance at a medical or psychiatric clinic, or avoidance of specified company or places.

The probation order requires that the probationer will be 'supervised by a probation officer', and it is the first responsibility of the officer to ensure that the conditions of the order are adhered to. At the same time, every effort is made to assist the probationer to develop personal resources and any other capabilities which may enable the probationer to lead a more useful and productive life in society. Contact between the probationer and the probation officer varies in its intensity. Initially, it tends to be more frequent, and then gradually decreases. The seriousness of the offence committed, the person's adjustment and progress, and the length of the probation period all affect the degree of supervision.

Prior to the establishment of the Office of Corrections, the Victorian Government had recognised that due to insufficient resources probation had ceased to be regarded as a credible alternative to imprisonment in Victoria. Significant attention had been paid by the Division to restoring the credibility of probation and there has been a substantial increase in the percentage of probationers being supervised in the community. The valuable role of Honorary Probation Officers in supervising probationers has been endorsed by the Office.

Adequate resources are not yet available to provide supervision of all offenders on probation, but high priority is being given to supervising offenders newly placed on probation. In 1984-85, the number of Honorary Probation Officers assisting the Office will be substantially increased. A training course to assist the staff in recruiting and training honoraries has taken place.

Within the programme, resources will be utilised to improve operating policies and procedures in line with the requirements of the Office of Corrections. One positive result of the integration of responsibility for community based correctional programmes has been that probationers now have the opportunity in a number of regions for access to the resources of the Attendance Centre Program. This has been used to provide group activities for appropriate probationers to assist with the management of stress and anger, controlling shoplifting, and developing basic adult literacy.

The number of probationers increased from 3,045 at the end of June 1983 to 3,345 at the end of June 1984. However, Victoria continues to have the lowest rate of probationers per 100,000 of population of any State in Australia (82.6, compared with the national rate of 155.6 at the end of June 1984).

Pre-Release Programme

The *Community Welfare Services (Pre-Release Programme) Act* 1983 was proclaimed on 27 March 1984. The Act provides for a Pre-Release Programme sequenced between time spent in custody and release on parole for prisoners serving maximum/minimum sentences and on time spent in custody and final discharge for those prisoners serving straight sentences. Clients on the programme must be serving a prison sentence of twelve months or more, and must serve at least three months and no more than twelve months on the programme. Also, the period of the pre-release permit must not exceed one-third of the total sentence. The courts have the power at the time of sentencing an offender to impose a veto preventing an offender from being considered for possible placement on the programme.

The programme is available State wide and from its commencement on 2 April 1984 up to 30 June 1984 a total of 199 prisoners had been released on pre-release permits by the Adult Parole Board. Prisoners released onto the programme attend for up to sixteen hours each week for the duration of the permit. In the majority of cases, this involves attending an Attendance Centre for two evenings each week for personal development sessions and undertaking up to ten hours of community service work each Saturday. In regions which currently have no Attendance Centre, more flexible arrangements may be made but the same basic requirements have to be met by pre-releases.

Parole orders

Parole refers to persons who have been sentenced to a term of imprisonment and are then released, having served a portion of the sentence imposed. On the prisoner's release, the remainder of the sentence becomes the period of parole. The decision to release eligible prisoners on parole rests with the Adult Parole Board. Parolees are supervised by staff in regional offices with the aim of facilitating the parolees' reintegration into the community.

A Parole Order thus allows a prisoner to be released from prison to serve a parole period in the community. The 'parole period' is the difference between the minimum sentence and the maximum sentence as determined by the sentencing court, subject to the discretion of the Adult Parole Board. Where a sentence of two years or more is imposed, a minimum term is ordinarily set. Where a term of between two years and one year is imposed, a minimum term *may* be set, and where less than one year is imposed a minimum term is not set (see section 190 of the *Community Welfare Services Act* 1970).

Parolees are released under supervision at the discretion of the Parole Board, and if the conditions of the order are breached – including further offences – the parolee may be returned to prison to serve the balance of the sentence. Release of prisoners on parole is determined by the Adult Parole Board under the provisions of the *Community Welfare Services Act* 1970. The Board consists of a Judge of the Supreme Court of Victoria (Chairman), the Director-General of the Office of Corrections, and three other persons appointed by the Governor in Council, one of whom must be a woman. In addition, the Parole Board makes decisions about the release of prisoners on the Pre-Release Programme (see above) and makes recommendations concerning the release of those prisoners sentenced to 'Life' or 'Governor's Pleasure' sentences.

The main concern of the Parole Board is whether the person is a good risk on parole. The Board bases its decisions on the reports it receives from the parole services and prison authorities. Medical and psychiatric reports are also submitted when necessary. The person's criminal history is also taken into account. The Board may either grant parole, defer consideration to a later date, or deny parole. Parole Board decisions cannot be appealed against legally but, at the request of the prisoner or the prisoner's relatives, can be reviewed.

In the main, parole supervision procedures are similar to those of probation. On the day of release, the parolee is handed a parole order which contains conditions similar to those on probation orders. The parole officer is required to ensure that the conditions of parole are complied with, to assist the parolee, and where appropriate, the family of the parolee.

As for probation, there has been some growth in the number of parolees, from 873 at the end of June 1983 to 1,025 at the end of June 1984. The figures relate to parolees being supervised in Victoria, including parolees from other States resident in Victoria. Victoria's rate of use of parole per 100,000 of population is substantially below the national rate – 26.2 compared with the national rate of 35.5 at the end of June 1984 – reflecting Victoria's position as the State with the lowest imprisonment rate in Australia.

Strategic Services Division

The Strategic Services Division provides planning and development advice and information to the Director-General of Corrections and the organisation as a whole. Its responsibilities include the development of legislation, facilities, programmes, and information systems, and the planning, formulation, and monitoring of corporate policy.

The establishment of a Strategic Services Division in the Office of Corrections is an important innovation in a correctional setting. Specialist functions, requiring high level technical expertise, such as the systematic planning and review of programmes, building development, computerised information systems, research, and policy and programme development of adult correctional services in Victoria were previously undertaken by staff with significant operational responsibilities.

The Division was established in February 1984, and consists of the following units:

(1) the Building Development Unit is responsible for all works and services projects in the Office of Corrections. This includes a major prison construction and redevelopment programme, approximately $8m per annum for repairs and maintenances to existing prisons, as well as the provision of facilities for community corrections and headquarters. This is the first time in one hundred years that a major prison construction programme has been undertaken in Victoria. Activities to date have focused on design development and prototype testing.

(2) the Information Systems Unit is responsible for the development of the computerisation of the Office of Corrections client and financial record systems. The Unit's first major task is the implementation of a Prisoner Information and Management System (PIMS), to be followed by the development of appropriate computerised management information systems in other key areas.

(3) the Planning and Review Unit is responsible for developing and maintaining an integrated corporate plan for the Office of Corrections, including developing goals and objectives, monitoring the internal and external environment, developing strategies, and monitoring progress and consequences.
(4) the Policy and Program Development Unit provides development and review functions of policy, existing and potential correctional programmes, and operational procedures for prisons and community-based corrections.
(5) the Research Unit is responsible for a wide range of research activities of vital concern to the organisation, associated with the review and development of data bases for policy and programme purposes, and provides advice on appropriate research and statistical methodologies.
(6) the Legislative Development Unit is responsible for formulating proposals for legislation as directed and overseeing the processing of finalised proposals, preparing and submitting all subordinate legislation, and advising the operational units of the Office of Corrections on the implementation of new legislation. The Unit's major initial function is development of proposals for the consolidation of all adult corrections legislation in Victoria.
(7) the Public Relations and Publications Unit is responsible for providing both verbal and formalised information about the Office of Corrections and for promoting the office. It also offers advice and assistance to staff in all public relations and publications matters.

Management Services Division

The Management Services Division provides the Office of Corrections with the administrative, training, financial, management, and other support services necessary to ensure the maximum utilisation of the Office's resources. The Division consists of four branches, namely, the Staff Training College, temporarily located in the Melbourne suburb of Watsonia, and the Personnel, General Administration, and Finance and Accounting Branches.

Formal training in the Office of Corrections – incorporating prison officer training, community-based corrections staff training, volunteer training, and management training – is conducted at the Office of Corrections Staff Training College, which began training activities in February 1984. The College is a corporate focal point for the development of the Office, providing academic and practical training at all levels, as well as fostering pride, standards, and *esprit de corps*. Its present location at Watsonia is intended to be temporary since a new Staff Training College is to be built adjoining the first new prison to be constructed in accordance with the recommendations of the Corrections Master Plan. A site in Bacchus Marsh Road, Anakie East has been selected for the construction of the 250 bed Barwon Prison and Office of Corrections Staff Training College.

OFFICE OF CORRECTIONS, TRENDS IN CLIENT POPULATIONS, VICTORIA

Programme	1979-80	1980-81	1981-82	1982-83	1983-84
Prisoners –					
Sentenced during year	4,306	4,208	3,921	4,686	5,290
At end of year –					
Number	1,784	1,841	1,809	1,968	1,916
Rate *(a)*	45.8	46.7	45.3	49.2	47.7
Attenders *(b)* –					
Sentenced during year	298	337	549	567	587
At end of year	147	163	268	278	302
Probationers –					
Received during year	1,542	1,513	1,910	1,923	1,942
At end of year –					
Number	2,952	2,713	2,974	3,045	3,345
Rate *(a)*	75.8	69.0	74.5	76.2	83.4
Parolees –					
At end of year	811	809	965	873	1,025
Rate *(a)*	20.8	20.6	24.2	21.8	25.6
Community Service Orders *(c)* –					
Received during year	..	..	..	50	79
At end of year	..	..	..	25	42
Pre-releases *(d)* –					
Received during year	..	..	..	..	199
At end of year	..	..	..	..	199

(a) Per 100,000 of the Victorian population.
(b) Programme commenced in June 1976.
(c) Programme commenced, in one region of the State only, in September 1982.
(d) Programme commenced in April 1984.

PRISONS, TRENDS IN POPULATION, VICTORIA

Particulars	1979-80	1980-81	1981-82	1982-83	1983-84
Receptions during year *(a)*	8,424	8,428	8,182	8,927	9,382
Discharges during year *(b)*	8,302	8,371	8,214	8,768	9,434
In prison at end of year –					
Convicted	1,700	1,733	1,637	1,793	1,736
Unconvicted	84	108	172	175	180
By sex –					
Males	1,730	1,783	1,758	1,900	1,850
Females	54	58	51	68	66
Total	1,784	1,841	1,809	1,968	1,916
Daily average prison population –					
Males	1,681	1,734	1,725	1,803	1,900
Females	46	54	55	57	59
Total	1,727	1,788	1,780	1,860	1,959

(a) If an individual is received into prison custody more than once during the year, a new reception is recorded each time.
(b) If an individual is discharged to attend a court hearing and is subsequently convicted, sentenced, and/or returned to custody, a separate reception is recorded each time.

ATTENDANCE CENTRES, TRENDS IN POPULATION *(a)*, VICTORIA

Particulars	1979-80	1980-81	1981-82	1982-83	1983-84
Receptions during year	298	337	549	567	587
Discharges during year	300	321	444	557	563
In attendance at end of year –					
Males	142	158	254	254	285
Females	5	5	14	24	17
Total	147	163	268	278	302
Daily average Attendance Centre population –					
Males	141	147	218	247	248
Females	2	4	8	16	20
Total	143	151	226	263	268

(a) The maximum authorised capacity of the four operating Attendance Centres was increased from forty to sixty attenders from 1 July 1981. A fifth Attendance Centre opened in October 1981, and a sixth Attendance Centre opened in November 1982.

RESIDENTIAL TENANCIES *

Introduction

Residential tenancy law is that part of the law of tenancy concerned with the relationship between landlords and tenants of residential properties. Such a relationship arises when there is an agreement under which one person, the landlord, grants to another person, the tenant, the right to exclusive possession of residential premises. The relationship does not extend to such people as boarders and lodgers, who acquire a right to use premises, but who do not become entitled to exclusive possession of them.

History

Historically, the law relating to landlord and tenant arose mainly in the context of agricultural land. The tenancy agreement created an interest in land, and much of the law concerning the tenancy relationship was based in real property law rather than the law of contract. As a consequence the law did not distinguish between tenancies relating to residential property and other types of property, and did not deal with the peculiar problems of residential tenants.

When Victoria became a separate colony it inherited the English common law relating to landlord and tenant, and for many years, the only Victorian legislative provisions dealing with tenancy agreements reflected this history. During the Second World War the Commonwealth introduced regulations under the National Security Act which imposed rent control and restrictions upon the

* 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.

recovery of premises from tenants. These regulations remained in force in Victoria until they were replaced in substantially similar form by the *Victorian Landlord and Tenant Act* 1948. Over the next few years there was a gradual easing of these controls, but they were never completely repealed in relation to residential premises.

Prescribed premises

By 1980, there were only two categories of premises still subject to the 1948 controls (which by then were to be found in Part V of the *Landlord and Tenant Act* 1958). The first category comprises premises originally leased between 1941 and 1954 where the lease to the same person (or spouse) has continued in effect, and the second category comprised premises which were declared to be prescribed by order of the Governor in Council. Both categories were called 'prescribed premises'. In each case the rent of the premises was controlled and generally could only be altered by the Fair Rents Board established under the Act. In determining the fair rent, the Board had to have regard to various specified matters, including any hardship which might be caused to either party. Similarly landlords could not recover possession of prescribed premises unless they could establish one of the grounds set out in the Act. Applications for possession were held before Magistrates' Courts, and in determining whether or not to make an order the Court again had to take into account hardship.

An attempt was made to change this position in 1980 when the *Residential Tenancies Act* 1980 was passed containing provisions designed to phase out prescribed premises over a period of two years from the date of the commencement of the Act, but the attempt was unsuccessful as the relevant provisions of the 1980 Act were repealed by the *Residential Tenancies Act* 1982 before the phasing out became operative. However, the latter Act did remove the power of the Governor in Council to prescribe premises and conferred upon the Residential Tenancies Tribunal jurisdiction to deal with the recovery of possessions and the rent of prescribed premises. The result is that tenants of prescribed premises at the date of commencement of the Residential Tenancies Act continue to be covered by the *Landlord and Tenant Act* 1958, although no new prescribed premises can come into existence.

Other premises

During the 1970s there was much agitation for reform of the law relating to residential tenancies. Apart from the statutory provisions relating to prescribed premises, there were few specific laws dealing with the problems which were increasingly apparent in residential tenancies. The Landlord and Tenant Act provided for fourteen days notice to quit in the case of a dwelling house held on a periodic tenancy not exceeding one month, and enabled the court to order a stay of issue of a warrant for possession for up to three months, but otherwise dealt mainly with technical matters. Problems relating to security deposits, repairs, and conditions of premises for tenants in urban dwellings were not specifically dealt with by the law. It was argued that the law had little relevance to the practical problems of the landlord and tenant relationship experienced in the over 250,000 residential tenancies in Victoria.

These considerations led to a review of the law which culminated in the passing of the *Residential Tenancies Act* 1980. This Act has substantially changed the law relating to residential tenancies.

Residential Tenancies Act

The *Residential Tenancies Act* 1980 (in this part of the article called 'the Act') covers the majority of residential tenancies in Victoria, and the following paragraphs set out its main features.

Ambit of the Act

Although the Act applies to most residential tenancies, there are a number of exceptions spelled out in the Act in addition to the exception already discussed in relation to prescribed premises. Several of these exceptions relate to agreements where the use of a residence is ancillary to some other purpose, for example, the letting of a combined shop and dwelling, a farming property or a holiday home, or the entry into a nursing home. Other exceptions include the letting of the landlord's own residence for less than sixty days, and tenancy agreements for a period exceeding five years. Agreement exempted from the provisions of the Act remain covered by the *Landlord and Tenant Act* 1958 and the common law.

On the other hand, the Act does bind the Crown; so that residential premises let by government departments and instrumentalities are covered by the Act. This is a significant inclusion, as it means that the benefits and protections afforded by the Act apply to all Ministry of Housing tenancies.

The agreement

An agreement for the letting of residential premises does not have to be in writing unless it is for a term exceeding three years. However, the Act does provide that where an agreement coming within its

ambit is in writing, it must be in or to the effect of a standard form which has been prescribed under the Act. The form is brief and in simple terms, and sets out the major rights and obligations of the parties. Many detailed matters are not included because the rights and obligations concerning them are imposed directly by the Act itself. The Act ensures that the tenant becomes aware of these matters by providing that the landlord must give the tenant a simple statement of rights and duties in the form prescribed by the regulations. The statement also informs the tenant of the names and addresses of relevant government agencies. The landlord must also give the tenant a copy of the agreement.

Rent

While the Act does not impose any general controls over the level of rents, and the parties are free to negotiate any rent they think fit at the time of entering into their agreement, there are a number of provisions relating to rent. For instance rent may be adjusted or increased only at intervals of not less than six months, and sixty days notice in writing must be given of any increase. Where the landlord gives notice of an increase in rent or reduces or withdraws any goods, services, or facilities provided with the premises, the tenant may complain that the rent is excessive, and in such a case the Residential Tenancies Tribunal may declare the rent excessive and fix the maximum rent payable for a period of twelve months. The test of whether the rent is excessive is whether it is significantly more than the market rent for the premises. There are provisions in the Act protecting a tenant from retaliatory eviction where the rent is declared excessive.

It is common for a landlord to demand rent in advance. In these cases, where the weekly rental does not exceed $100, the amount in advance is not allowed to exceed the equivalent of one month's rent.

Security deposits

Tenants are frequently required to pay a sum of money to the landlord at the beginning of the tenancy as security for their performance of the agreement. The amount payable (security deposit) is repayable at the end of the tenancy subject to any deduction by the landlord for unpaid rent or damages for breach of the agreement. Prior to the passing of the Act, security deposits were unregulated and were the source of much disputation between landlords and tenants.

The Act now regulates security deposits in a number of ways. They must be held by the landlord in trust for the tenant, and paid into an approved trust account. When the rent is not more than $100 per week, generally the amount must not exceed the equivalent of one month's rent. If there is a disagreement as to its return at the end of the tenancy, the Tribunal decides the matter. The Act does contemplate that a tenant might enter into an insurance agreement in lieu of paying a security deposit, but in practice it is difficult to obtain suitable cover.

Where the tenant is required to pay a security deposit a condition report on the state of the premises must be prepared. This is available as evidence if there is any subsequent dispute about damage to the premises.

Rights and duties

There are a number of provisions in the Act which prescribe rights and duties for landlords and tenants and these are set out in the prescribed statement which must be handed to the tenant. Particularly important are the provisions which replace the unsatisfactory common law relating to repairs. The landlord must maintain the premises in good repair, and the tenant must take care to avoid damaging the premises. When the landlord does not carry out urgent repairs, the tenant may do so at the landlord's expense up to the sum of $200. There are mechanisms provided for enforcing all of these obligations.

Other provisions concern vacant possession, condition of premises, quiet enjoyment, and landlord's entry without consent.

Termination and recovery of possession

While there are a number of circumstances in which a tenancy might terminate, generally, under the Act, a residential tenancy terminates only when possession is delivered up by the tenant, or possession is recovered under a warrant following upon proceedings for recovery of the premises. Unlike the common law, this applies in the case of both fixed and periodical tenancies. In most cases, where there is no mutual agreement, termination requires a notice to vacate from the landlord or the tenant. The amount of notice given depends upon the reason relied upon. In the case of the landlord, this ranges from immediate notice in the case of malicious damage to six month's notice where no reason is specified.

The procedures which must be followed for recovery of possession are set out in the Act. The

Tribunal has jurisdiction to make an order for possession, although the Supreme Court also retains such jurisdiction. Under the Act there is power in cases of hardship to order the postponement of the issue of the warrant for possession for up to thirty days.

Administration

Prior to the passing of the Act there was no government body with administrative responsibilities for residential tenancies other than with respect to protected tenancies. Now, under the Act, the Director of Consumer Affairs is given a number of functions in relation to residential tenancies. These functions are discharged through the Residential Tenancies Bureau established within the Ministry of Consumer Affairs. The Bureau is available to give advice to members of the public in relation to the operation of the Act, and it attempts to negotiate settlements of complaints or disputes.

The Act also establishes the Residential Tenancies Tribunal, which has jurisdiction to deal with disputes initiated by either landlords or tenants so long as they do not involve an amount exceeding $1,500. Examples would be disputes concerning security deposits, repairs, or excessive rents, and applications for possession.

The Tribunal is intended to promote quick and inexpensive resolution of disputes. Accordingly, it is not bound by rules or practices as to evidence, and may inform itself as it thinks fit. Generally, parties are required to conduct their own cases, but lawyers or other representatives may be permitted in specified cases. The Tribunal is not given exclusive jurisdiction, but once an application is made to it the issue cannot be adjudicated upon by any other Court.

Conclusion

There are now three classes of residential tenancies in Victoria:

(1) the vast majority, including all the straightforward lettings of premises for people to live in, which are covered by the Residential Tenancies Act.

(2) those relating to prescribed premises, which are covered by Part V of the *Landlord and Tenant Act* 1958.

(3) those others exempted from the Residential Tenancies Act, which are covered by the general provisions of the Landlord and Tenant Act, and the common law.

There is still political disagreement as to the details of the Residential Tenancies Act, and its operation is bound to be reviewed. Important questions have been raised as to security of tenure, insurance in lieu of security deposits, and the jurisdiction of the Tribunal. There have been calls also to bring tenants of mobile homes, and boarders and lodgers within its ambit. It is therefore likely that there will be further changes in this field, although it has not been suggested that there should be a return to the position that existed before the coming into operation of the Residential Tenancies Act.

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