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JUSTICE AND THE ADMINISTRATION OF LAW

INTRODUCTION

This Chapter seeks to give an overview of developments in Victoria's laws and legal system since 1934. Following the general introduction, specific sections outline the major trends in legal control, legal reform, and the criminal law. The Chapter then outlines the changes in the courts and their jurisdictions, and these are followed by specific sections on the Bar and the legal profession generally, the Victoria Police Force, the Law Department, legal aid and legal education.

The course of legal development since 1934 has reflected major social, economic, and technological changes in Victoria. The Depression was followed by war, which in turn brought the State to the most significant era of economic development since the 1880s. This development was matched by governments which had stable majorities after 1955, population growth, the expansion of Melbourne, and the rise in ownership of the motor car. Since the mid-1970s, there has been a discernible increase in crimes against property, trust fund defalcations, and company failures (with their associated offences), and new forms of "white collar" crime.

In the actual administration of law, the most striking developments common to the Supreme Court and County Court have been the increase in the number of judges, the change in the nature of cases coming before the Courts, the increase in the duration of civil and criminal proceedings, and (in the latter part of the period) the availability of legal aid to litigants.

Comparisons over the period show the increase in legal activity. In the Supreme Court 634 writs were issued in 1934 and 9,589 in 1981. Civil cases heard in 1934 numbered 86; there were over 2,100 in 1981. The type of case altered too, partly because of the commencement of the Family Court. In 1934, most of the civil cases heard related to divorce. Closely related to the increase in the number of cases has been the increase in the number of Court's personnel from 150 in 1934 to over 900 in 1981.

Besides the Supreme and County Courts, there has also been an increase in cases heard in Magistrates' Courts from 55,539 in 1934 to 643,926 in 1981, and in the Children's Court from 3,061 in 1934 to 27,013 in 1981. Changing social conditions have given rise to new courts and tribunals such as the Small Claims Tribunal, the Motor Accidents Tribunal, Crimes Compensation Tribunal, the Market Court, the Equal Opportunity Board, the Credit Tribunal, and planning and environmental tribunals.

CHANGING PATTERNS OF LEGAL CONTROL

Since 1934, there has been a significant development of legislative initiatives in relation to the regulation and control of a range of activities, side by side with a more conservative and restrained reaction from the courts in interpreting those developments, both at the State and Federal level. Many of the initiatives reflect changes in society and its reaction to developments that have occurred at home, as well as the influence of developments overseas. In response to these changes, the legal profession has altered the nature of many of its practices and approaches. Some examples of this trend in legislation are given below.

Family law

An area in which there has been remarkable change is that of family law and related fields. Family law is a good example of strong intervention by the legislature resulting in changes not only in the manner in which this area of the law is administered and practised by the profession but also in patterns of control. Legislative changes would seem to reflect significant changes in communal attitudes to marriage and divorce.

Major reform in family law by way of Commonwealth legislation began in the early 1960s. Then, in 1975, the *Family Law Act* 1975 removed family disputes from the regular courts of the State when the family is based on a marriage. Questions relating to marriage, custody of children, maintenance, and distribution of property on the break-up of the marriage were vested in the new Family Court. Disputes concerning unmarried parents and their children continue to come before the State courts. The divorce laws under the 1975 Act operate on the basis that the only ground for divorce is irretrievable breakdown of the marriage, established by showing that the parties have lived separately and apart for not less than twelve months and that there is no reasonable likelihood of cohabitation being resumed. While important questions of law arising out of the interpretation of the legislation may still finish up in the High Court of Australia (the final appeal body from this Court), a very large percentage of cases are finally determined in the Family Court. When compared to practices in the regular courts, those of the Family Court are relatively informal; thus, the judges and barristers participating in the Court do not appear in traditional robes. Speedy and efficient determination of disputes is the central aim of the Court's operation, but this cannot always be achieved because the complexity of litigation coming before the Court can cause severe delays in disputed matters (for example, the division of property and the custody of children).

The nature of the work undertaken by the Court has resulted in a significant change in the patterns of legal work carried out by both practising branches of the profession. Whereas in the past, the area of family law was regarded as highly legalistic, the new Court relies on the ability of counsel and solicitors to act not only as advocates and negotiators for, but also as counsellors to, their parties. In conjunction with the judicial system within which disputes are settled, there has been built up (under the Act) an important body of social workers and marriage guidance counsellors, whom parties are usually required to consult prior to a dispute going to court.

Consumer protection

The emergence of consumer protection in the United States of America in the late 1950s and early 1960s also reached Australia and Victoria. Greater "legislative" protection was introduced for the consuming public. At the Federal level consumer protection legislation was introduced in the form of the *Trade Practices Act* 1974 (Part V). In addition, there were important new regulations in relation to labelling and marking of goods. These were being extended gradually to cover a wider range of goods.

Victoria has also followed this pattern in consumer protection. The Victorian consumer protection legislation pre-dates the Federal legislation, although it is not as far reaching in many respects as the Federal legislation. The Victorian Consumer Affairs Council and Consumer Affairs Bureau were the first bodies to attempt the control of practices which may be regarded as damaging to the consuming public. The range of activities has grown from year to year (reflecting the sophistication and variety of business activities that exist in the State and the demands of the consuming public), and the initial strong reaction to consumer protection legislation has been tempered by a clearer public understanding of the aims of the legislation.

At the Federal level, the Trade Practices Act has widened the range of protection that is available to the consumer in relation to interstate transactions or transactions carried out by trading corporations whether they be located in Victoria or not—especially in relation to warranties and conditions that apply to goods. The Trade Practices Act makes it invalid for a supplier or manufacturer of goods to contract out of certain conditions that relate to the merchantability of goods, the fitness of purpose of goods, and similar statutory warranties. Under existing Victorian and other State laws, it is possible for the supplier or the manufacturer to contract out of these obligations in specific cases.

In the early 1980s, new legislation regarding consumer credit was enacted in Victoria. With a growing number of Australians purchasing goods and services on credit, some of the existing legislative mechanisms (the hire purchase legislation, the money lending legislation, and related Acts of Parliament) are no longer relevant to the sophisticated problems raised by the growth in consumer credit. These include difficulties in relation to regulating the use of information that must be supplied to the consumer, the advertising of financial terms, and in the cost of financial terms to the consumer. Problems have arisen because many consumers, without knowing that they are doing so, overcommit themselves, and it has been found that the regular courts are not always the best places for settling many of the disputes that arise out of the use of consumer credit.

Another development of significance in Victoria has been the establishment of the Small Claims Tribunal where disputes of less than $1,000 may be settled without the need to litigate through the regular courts. Since the Tribunal came into operation on 4 February 1974, a total of 17,300 claims had been lodged for determination as at 30 June 1981. In 1978 Victoria established the Market Court. This Court, which is also aimed at settling disputes involving persons engaged in trade, has to date been used infrequently. All these pieces of legislation seek to reduce the cost and the time involved in litigation arising from the sale to consumers of either goods or services. Lawyers are not permitted to appear in the Small Claims Tribunal as such, although in the Market Court they are permitted to represent parties in certain circumstances.

Environmental protection

Social concern has been influential in requiring greater attention by legislatures, the community, and the courts to be paid to issues involving environmental protection. Victoria, like other States, has legislated in this area. The Environment Protection Authority (established in 1970) monitors all development and controls certain kinds of pollution. The Environment Protection Authority has prosecuted a number of companies from time to time for breaching regulations promulgated pursuant to the legislation. These cover unlawful discharge of waste material as well as the discharge of smoke and other noxious substances into the air.

In Australia there is little opportunity for interested "by-standers" to intervene in the decision making or litigation process involving environmental matters. In 1980, the High Court of Australia held that the Australian Conservation Foundation did not have a right to intervene in the inquiry into the environmental effects of the development of a tourist resort at Farnborough in Queensland. However, in 1981 the High Court allowed members of an Aboriginal tribe to have access to the Courts to attempt to prevent the construction of the Alcoa aluminium smelter at Portland because they were, by tribal custom, the custodians of relics of cultural and spiritual significance on the site.

Restrictive trade practices

At the Federal level, new legislation was introduced to control anti-competitive restrictive trade practices under the *Trade Practices Act* 1974. Victoria, however, has not followed suit in introducing complementary State legislation in this area. In 1971, legislation was introduced to protect Victorian companies from takeover. The *Parliamentary Committee's (Takeover-offers) Act* 1972, established a joint committee of the Legislative Council and Assembly (known as the "Company Takeovers Committee") with the power to examine any takeover of a Victorian company, and to prevent takeovers where this might be damaging to the Victorian economy. Only two takeovers have been referred to that Committee, both in 1975.

Some professions and companies have re-arranged their business activities in such a way as to take advantage of the limited Federal power to regulate anti-competitive conduct at a Federal level, although at the Federal level there has been a significant amount of litigation in this area.

Accident compensation legislation

There has been little change over the period in relation to accident compensation. An attempt by the Commonwealth Parliament to introduce a system of no fault liability

legislation in relation to all accidents (based on the New Zealand legislation) lapsed in 1975. In Victoria, the Motor Accidents Compensation Board (established in 1973 under the *Motor Accidents Act* 1973) provides monetary compensation in many situations where either the cost or delays associated with normal civil litigation might have been prohibitive to the injured parties or where no remedy lay at all. The Act provides, however, that common law rights may still be exercised.

Administrative law

Victoria has introduced new legislation to enforce, under relatively simple procedures, the common law principles in relation to administrative law and the review of decisions of administrative bodies. The *Administrative Law Act* 1978 has been interpreted by the Courts as being, in effect, a codification of the existing common law. This Act, together with similar Federal legislation and the establishment of the Federal Administrative Review Tribunal, have created a greater awareness in the general community of the important remedies available in this area.

Hitherto, uncertainty as to the remedies, the non-availability of special courts, the problems associated with legal costs in challenging decisions, and other matters have been largely instrumental in constraining suits in relation to administrative tribunals and government departments and agencies.

The Federal legislation has removed the jurisdiction of State Courts to make orders in respect of Commonwealth officers and vested it exclusively in the Commonwealth Government.

Recent developments

The Supreme Court itself has seen the need to streamline and improve the efficiency of its system. Thus, for example, new lists such as the Building Causes List, the Industrial Property List, and the Commercial Causes List have led to more efficient litigation in areas involving commercial disputes. The Court has also undertaken the redrafting of the Supreme Court rules, often based on new principles, and it encourages the trend away from undue technicality in litigation. In the area of town and country planning new appeal bodies have been established. The growth in the number of administrative and semi-administrative bodies has meant the increase in decision making and the increase in the number of challenges brought against these bodies. Consumer protection and trade practices are two other important areas. The creation of the Family Court has changed the family law practice of the legal profession.

LAW REFORM

Background

Before 1934, there had been substantial achievements in law reform in Victoria. In the main, however, these had consisted of the enactment here, sometimes with some modifications, of the provisions of English reforming statutes, such as the Judicature Act, the Acts which introduced judicial divorce, workers compensation, and criminal appeals, and those which reformed the law in special areas, e.g., offences against the person, married women's property, settled land, and adoption of children.

There had been some notable local innovations before 1934. Examples were the secret ballot (1855), the periodic consolidations of the statutes (1865, 1890, 1915, and 1928), the wages board system (1905), and the *Imperial Acts Application Act* 1922. But there was no authority or organisation, outside the Executive Government and Parliament, whose functions included the initiating of proposals for law reform. The Statute Law Revision Committee was, indeed, established in 1916 by resolutions of the two Houses. But its authority was limited to matters referred to it by one of the Houses; and until 1934 the only matters upon which it had made reports were the 1928 Consolidation, the Imperial Acts Application Bill, and a Statute Law Revision Bill.

Statute Law Revision Committee

For fifteen years after reporting on the 1928 Consolidation this Committee made no reports; but in 1945 it resumed reporting. In 1948, by Act No. 5285, it was given a statutory constitution, extending its functions to examining and reporting upon proposed consolidations, upon anomalies in the statute law, and upon such Bills, involving technical changes, as might be referred to it by either House. It was to consist, as previously, of six members from each House, and at all times both sides of each House have been represented upon it. In 1962, by Act No. 6960, its functions were extended to examining any law reform proposals referred to it by the Attorney-General. The Committee ceased to operate in February 1982 when the Legislative Assembly was prorogued; its functions were taken over by the newly formed Legal and Constitutional Committee. In exercising its statutory functions the Statute Law Revision Committee's procedure was to invite submissions from persons and organisations concerned, and from experts, and to hear unsworn evidence and discuss points of difficulty with witnesses.

Between 1945 and February 1982 the Committee presented 216 Reports. These covered the Bills for Statute Law Revision Acts, ten special consolidating Acts, and the Bills for the 1958 Consolidation of Statutes. They also covered the Bills for a large proportion of the important law reforms of the period. For some of these reforms major credit belongs to the Committee. Examples are the *Crimes (Powers of Arrest) Act* 1972, the *Ombudsman Act* 1973, and the *Adoption of Children (Information) Act* 1980.

Legal and Constitutional Committee

The role of the Statute Law Revision Committee was taken over by the Legal and Constitutional Committee, part of the newly created committee system set up by the *Parliamentary Committees (Joint Investigatory Committees) Act* 1982. The new Committee is also representative of both Houses of Parliament, having twelve members, up to six of whom may be from the Legislative Council and up to ten of whom may be from the Legislative Assembly.

The Act provides for inquiries to be referred to this Committee either by joint resolution of both Houses of Parliament or by Order of the Governor in Council. Soon after it commenced operation, in August 1982, the Committee received a reference by Order of the Governor in Council to investigate delays in the hearing of cases in Victorian courts.

The Committee also carries out the function of reviewing subordinate legislation and by November 1982 had drafted a Statute Law Revision Bill and the Statute Law Revision (Repeals) Bill, the latter having the effect of repealing a large number of outdated and now anachronistic pieces of legislation.

Chief Justice's Law Reform Committee

During the Depression and the Second World War, there was little law reform activity in Victoria. In 1944, however, the Chief Justice Sir Edmund Herring established a Chief Justice's Law Reform Committee, modelled broadly on the English Law Reform Committee of 1934 (created by the Lord Chancellor), to formulate proposals for law reforms in areas not politically contentious. This body has at all times been a representative committee of judges, barristers, solicitors, and academic lawyers, membership being by invitation of the Chief Justice.

The principal sources of law reform proposals brought before the Committee have been references by the Attorney-General or his Department, suggestions by Judges or by the Bar, the Law Institute or their members, and invitations by the Statute Law Revision Committee to submit views upon matters before the body. The Committee relies largely on the use of sub-committees to study specific subjects for reform and report back.

By November 1982 more than 200 reports had been made by the Committee. There had, however, been a break of two years in the Committee's work—covering 1952 and 1953—due to its concern at the absence of action upon its reports relating to Crown Immunity, Limitation of Actions, Trusts, and Transfer of Land. It received official reassurances, however, and resumed its work in 1954; and those four reports were all implemented (Acts Nos. 5770, 5802, 5874, and 5914).

Most of the Committee's Reports recommended some legislative change and by November

1982 approximately half of these recommendations had been implemented, wholly or in part. Of the implementing statutes a substantial percentage, particularly in more recent years, have been local innovations. Some examples are the *Sale of Land Act* 1962, *Wills (Formal Validity) Act* 1964, *Evidence (Documents) Act* 1971, *Wills (Interested Witnesses) Act* 1977, *Domicile Act* 1978, *Administrative Law Act* 1978, and the *Associations Incorporation Act* 1981.

Law Reform Commissioner

During the late 1960s public interest in law reform increased greatly throughout Australia; and within a few years all States and the Commonwealth had created Law Reform Commissions. In Victoria the office of Commissioner was created by the *Law Reform Act* 1973 and the first appointment to the office took effect on 1 January 1974. The functions of the Commissioner, as laid down in the Act, are to advise the Attorney-General on the reform of the law, and to investigate and report upon any matter relating to law reform which is referred to him by the Attorney-General. The Commissioner is assisted by a small full-time staff and by an Advisory Council consisting of himself, as chairman, the president of the Law Institute or his nominee, the chairman of the Bar Council or his nominee, and three persons appointed by the Attorney-General.

By November 1982, the Commissioners had furnished a number of advices to the Attorney-General, including one recommending legislation on hi-jacking demands, siege situations, and bomb hoaxes, and another concerning the testator's Family Maintenance Provisions. They had circulated seven Working Papers and submitted twelve Reports to the Attorney-General on the following topics: No.1. The Law of Murder; No. 2. Criminal Procedure; No. 3. Criminal Liability of Married Persons; No. 4. Delays in Supreme Court Actions; No. 5. Rape Prosecutions; No. 6. Spouse Witnesses; No. 7. Innocent Misrepresentation; No. 8. Pre-incorporation Contracts; No. 9. Duress, Necessity and Coercion; No. 10. Delivery of Deeds; No.11. Unsworn statements; and No. 12. Provocation and Diminished Responsibility as Defences to Murder. By November 1982 there had been substantial implementation of Reports Nos. 2, 3, 5, 6, 8, and 10 and of the advice on hi-jacking demands, siege situations, and bomb hoaxes, and work was in progress on corporate crime, intoxication and criminal responsibility, and the law of homicide.

Victoria Law Foundation

The Foundation was established in 1967 by Act No. 7539 and is now governed by the *Victoria Law Foundation Act* 1978. It is a corporation consisting of the Chief Justice, the Attorney-General, the Law Reform Commissioner, representatives of the legal profession, and some laymen.

The income of the Foundation is provided, primarily, from the Solicitors' Guarantee Fund established under the *Legal Profession Practice Act* 1958 (as amended). Its objects include promoting or undertaking legal research in the reform of the law, and projects directed towards improvement of the administration of the law.

Further to its law reform objects the Foundation has made grants in aid of a number of research projects which formed the basis of subsequent reform. Thus, for example, in 1975 it provided the funds to the Attorney-General for a six months' study by management consultants of delays in bringing accused persons to trial in the County Court at Melbourne; the report led to substantial administrative changes. Funds were provided also to enable the making of a review of the *Imperial Acts Application Act* 1922 which has resulted in important legislation in Acts Nos. 9407, 9408, and 9426 (all of 1980).

In 1976-77, the Foundation, in order to obtain factual information about the legal profession, carried out a comprehensive survey of the legal profession in Victoria, covering its education, composition, and organisation, and the views of its members on matters which might bear upon proposals for reforms. The report has been published in two volumes— *Victoria's Lawyers* (1978) and *Victoria's Lawyers II* (1981).

In 1983, the Foundation was completing major studies on administrative tribunals in Victoria, the Administration of civil justice in Victoria (in conjunction with the Victorian Government), and the revision of the Rules of the Supreme Court (the latter project being under the formal direction of the Rules Committee of the Supreme Court).

Pursuant to statute (No. 8483) the Foundation has, since the beginning of 1974, made available to the Law Reform Commissioner the funds for carrying out his statutory functions. It also provides funds to the Chief Justice's Law Reform Committee.

Conclusion

The main source of law reform since 1934 has been by the Executive Government. From it have come major reforms in such areas as consumer protection, small claims enforcement, town planning, environmental protection, clean air, equal opportunity, status of children, seat belt legislation, uniform company law, and criminal damage to property. Moreover, where topics have been reported upon by one of the bodies above mentioned, the initiative for the report has often been a reference on request by the Attorney-General.

In 1977 the Attorney-General established the Criminal Law Working Group to carry out an ongoing review of aspects of the criminal law. The Working Group has examined a number of matters and provided draft legislation for the Attorney-General's consideration. Implementing statutes include the *Crime (Criminal Damage) Act* 1978, amending the law relating to criminal damage to property, and the *Crimes (Classification of Offences) Act* 1981, which abolished the division of crimes into felonies and misdemeanours.

Contributions have also been made by professional and community organisations and by individuals. Examples in this area are: (1) the setting up, at the instance of the Law Institute, of the trust account investment procedures to support the Solicitors' Guarantee Fund (Act No. 7226); (2) the reforms in residential tenancy laws resulting from the report in 1978 of the Community Committee on Tenancy Reform; (3) the work of the Hon. John Galbally in promoting the abolition of capital punishment and the reform of the vagrancy laws; and (4) the Chattel Securities Act, Goods (Sales and Leases) Act, and Credit Act of 1981, substantially implementing the recommendations of the Report on Fair Consumer Credit Laws (1972) of the Molomby Committee, a committee of the Law Council of Australia made up of practising and academic lawyers in Victoria.

CRIMINAL LAW

Introduction

In 1934, the criminal law in Victoria was almost entirely the common law, fashioned by English courts and judges, set firm by the great institutional writers, and imported into Australia as part of its legal heritage. Its criminal law, while still uncodified, is substantially embodied in a statute, the *Crimes Act* 1958, as amended in the last 25 years. Most of its substantive provisions have been enacted since 1970: many of them are modelled upon or at least suggested by, English enactments. But there are some important provisions which originated in Victoria.

Homicide

The law of homicide still remains substantially embodied in judicial decisions. Since 1934, the Victorian Court of Criminal Appeal has decided a number of landmark cases in this branch of the law, notably on self defence, the intent required in murder, and involuntary manslaughter. In 1969, Mr Justice Menhennitt gave a ruling, during the trial of a doctor charged with unlawful abortion, that if the defendant believed that the procedure was necessary for the health of the woman he was not criminally responsible. This ruling commanded immediate, widespread attention and has become accepted doctrine.

The major legislative provisions on homicide were the introduction of the new crimes of infanticide and child destruction in 1949, of causing death by culpable driving in 1967, and the abolition of the crimes of suicide and attempted suicide, also in 1967. The last enactment, modelled on the English statute of 1961, provided that the survivor of a suicide pact shall be liable to be convicted of manslaughter, not murder, and created a new offence of inciting or assisting another to commit suicide.

In 1974, the Victorian Law Reform Commissioner recommended the enactment of legislation to provide that constructive murder, of which felony-murder is the best known instance, should be abolished and that murder should be defined as killing with an actual intention to kill. In 1982, the Commissioner recommended in relation to the defence of

provocation, that the objective test be abolished, and further recommended that a defence of diminished responsibility be adopted for murder. These various recommendations have yet to gain the approval of the Government of Victoria.

Theft

In 1973 the Crimes (Theft) Act abolished the common law felonies of larceny, robbery and burglary, and the related statutory offences of embezzlement, obtaining by false pretences, fraudulent conversion, and obtaining by menaces, together with the congeries of specific larceny provisions in the Crimes Act. In place of this mixture of common law and statute, the legislation provided new crimes of theft, obtaining property or financial advantage by deception, robbery, burglary, aggravated burglary, blackmail, and handling stolen property. The statute is substantially a copy of the English *Theft Act* 1968. In 1977, the offence of armed robbery was added to the theft provisions.

Criminal damage

The common law felony of arson, and the statutory provisions modelled on the English *Malicious Damage Act* 1861, were abolished by the *Crimes (Criminal Damage) Act* 1978. In place of them four offences—intentionally causing damage or destroying property; intentionally causing such destruction or damage which endangers life; threatening such acts; and possessing material intending to use it to cause such damage—have been created by the new legislation.

Sexual offences

The most far-reaching changes to the substance of the criminal law were made by the *Crimes (Sexual Offences) Act* 1980. This statute abolished common law felonies such as rape. In their place a reformulated indictable offence of rape was created, where the victim may be a man or a woman, and where the offender may also be a man or a woman. The Act abolished criminal responsibility in respect of any consenting sexual activities between adults in private. Bestiality was preserved as an indictable offence. Several related common law rules characterised as obsolete were abrogated; boys under 14 years may now be convicted of offences involving sexual penetration, and married persons "living separately and apart" from their spouse may be convicted of a rape offence.

Criminal penalties

Death penalty

Twelve felonies carried the death penalty in Victoria in 1934. In 1949, capital punishment was abolished except for treason and murder. It was abolished in respect of these remaining crimes in 1975. The most severe punishment now provided in Victoria is imprisonment for a term of the convicted person's natural life, the mandatory sentence for treason or murder. Between 1949 and 1975, of the 209 persons convicted for murder or treason, only four persons were executed; the last execution was in February 1967. All other sentences of death were commuted, and sentences of imprisonment of varying terms were substituted.

Imprisonment

In 1934, less than half of those persons convicted of indictable offences in the superior courts were sentenced to imprisonment. In 1981, of 1,194 persons convicted in the Supreme Court and the County Court, 605 were sentenced to terms of imprisonment, while the remainder received non-custodial sentences. Probation for adult offenders, introduced as part of substantial legislative changes to the system of criminal punishment in 1956, was employed in 142 instances, while in 251 cases convicted persons entered into bonds. Fines were imposed on 111 offenders, forty-three persons were directed to Attendance Centres, and two were the subject of orders made under the *Alcoholics and Drug Dependent Persons Act* 1968.

The *Penal Reform Act* 1956 established a parole system. It provided that where a judge or magistrate imposes a term of imprisonment of not less than 2 years, he shall fix a minimum term during which the offender is ineligible to be released on parole. (Where a sentence of not less than 12 months is imposed, the court may fix a minimum term.) When the minimum term has been served, the offender may be released on parole.

The parole system is administered by a Parole Board. Both an Adult Parole Board and a Youth Parole Board have been established; a judge of the Supreme Court is chairman of the first, and a judge of the County Court of the second. While an offender is on parole, he is under the supervision of a Parole Officer.

More recently, legislative provisions for periodic imprisonment, or attendance at an Attendance Centre, or Community Service Orders, have been made. Special arrangements for the detention of mentally ill or alcoholic or drug dependent persons have also been created by the *Mental Health Act* 1959 and the *Alcoholics and Drug Dependent Persons Act* 1968. Although the latter provides for detention centres for persons whose offences involved drunkenness or drug addiction, no such detention centres have so far been created.

Compensation for victims of crime

Victoria followed the example of New Zealand and Great Britain in introducing a scheme of compensation for personal injuries suffered by victims of crime. The *Criminal Injuries Compensation Act* 1972 established the Crimes Compensation Tribunal, constituted by an experienced member of the Victorian Bar. The Tribunal may make awards to persons who have suffered physical injuries (including nervous shock or pregnancy) as a result of a criminal act, up to an amount (in 1981) of $10,000.

THE COURTS

Background

At 31 December 1934, the estimated population of Victoria was 1,836,660. There were seven Supreme Court judges and seven County Court judges. On 31 December 1981, the estimated population was 3,948,600 and there were twenty-one Supreme Court judges and thirty-four County Court judges.

In recent years, however, the number of Supreme Court judges has not been significantly increased. The banking up of cases was regarded as a temporary phenomenon, and for a time it was sought to overcome this by the appointment of acting judges. The same remedy was applied when judges were unavailable because of illness. Between 1969 and 1972, there were frequent short-term appointments of County Court judges as acting judges of the Supreme Court. There have been no acting appointments since 1972.

Two consequences of the economic development since the Second World War have been an increase in industrial accidents causing death and personal injuries, and, with a great increase in the number of motor vehicles, an increase in motor car accidents causing death, personal injuries, and damage to property.

The growth of consequential litigation based on negligence and breach of statutory duty was compounded by a series of statutes. Compulsory third party insurance against claims for damages arising out of the use of a motor car was introduced in 1939. In 1945, the doctrine of common employment was abolished; this doctrine, though already limited in its application by statute, had prevented an employee engaged in common employment with another employee recovering damages against the employer for injuries caused by the latter employee's negligence. In 1949, the law was altered so that any person liable to pay damages to an injured plaintiff could recover contribution in respect of those damages from any other person who was also liable to the plaintiff for the injuries. In the same year, instead of the plaintiff's contributory negligence being the complete answer to a claim against a negligent defendant, it was provided in effect that the plaintiff's damages should be reduced by such percentage as he was found to be responsible for his own damage. Thus a plaintiff whose damages were assessed at $100,000, who was held to be 25 per cent responsible for his own injuries, would recover $75,000.

With compulsory third party insurance in motor car cases providing payment, there was a large increase of motor car accident claims. Notwithstanding workers compensation legislation, claims for personal injuries arising out of industrial accidents also multiplied.

From 1954, employers were required to insure against liability in damages to employees injured at work. Most frequently the plaintiff sought and obtained trial by jury. It always was true that, of writs and summonses issued, a high proportion, largely consisting of debt claims, never came to trial, judgements being obtained in default of defence or by summary proceedings, or the action being settled. Most running down cases and industrial accident cases were also settled, usually after setting down and often after being placed in a daily list for trial. Few cases went to verdict: those that did, set (as it were) the measure by which the others were settled. It became a common feature of proceedings that judges waited in their chambers while Counsel settled most of the cases in the day's list.

The provision by statute in 1973 of limited compensation in motor car cases irrespective of fault has resulted in many persons whose disabilities from injury is not great, accepting the compensation and not commencing proceedings in the courts. Nevertheless, there has not been a significant reduction in the number of proceedings instituted in the courts. One noticeable change towards the end of the period was the tendency of defendants or their insurance companies, in cases where a proper award of damages might be large, to seek trial by jury where plaintiffs had sought trial before a judge alone.

The great extension of legal aid in the post-war years has been a major factor affecting criminal trials in two respects. First, trials take longer to complete, the accused's lack of means being no longer an argument in favour of avoiding unnecessary prolixity, and second, the availability of legal aid has meant that in criminal trials there are practically no prisoners who are undefended.

In the criminal, as in the civil jurisdiction, though not to the same extent, the motor vehicle has had its effect. The alleged reluctance of juries to convict for manslaughter in cases arising out of car accidents led to the introduction in 1967 of the statutory offence of causing death by culpable driving. Higher penalties imposed in 1955 for driving under the influence of alcohol and for dangerous driving and like offences led to these offences being classified as misdemeanours with a right to trial by jury, though with the accused's consent they could be dealt with summarily. Experience showed that juries were reluctant to convict, and in 1967 the offences were left to be tried by Magistrates only.

In 1923, in a memorandum to the Attorney-General, the Chief Justice, Sir William Irvine, had stated that, as a general rule, it is inappropriate for judges of the Supreme Court to act as Royal Commissioners. While, in general, the judges have adhered to that position, there have been some exceptional occasions in which judges have accepted such appointments. Thus, Mr Justice Lowe acted as Royal Commissioner, appointed by the Commonwealth Government, to inquire into the bombing of Darwin in 1942, and into certain allegations regarding the so-called Brisbane Line in 1944. He was also Royal Commissioner to inquire into communism in 1952. On the other hand, County Court judges on many occasions have acted at Royal Commissions and Boards of Inquiry. Judge Stretton, as Royal Commissioner inquiring into the disastrous bushfires of 1939, produced a report the literary style of which received high acclaim. Judge Barber acted as Royal Commissioner into the collapse of the King Street Bridge in 1962, and when, because of the experience he had gained, he was asked in 1970 to act in a like capacity regarding the collapse of the West Gate Bridge, he agreed to do so, although by that time he was a judge of the Supreme Court.

COURT PROCEEDINGS: VICTORIA, 1934 TO 1980

Year	Magistrates' Courts *(a)*		Children's Courts *(b)*		Higher courts *(c)*			
					Number of persons convicted for —			
	Convictions	Dismissals, etc. *(d)*	Convictions	Dismissals, etc. *(d)*	Offences against the person	Offences against property	Other offences	Total offenders convicted
1934	45,748	9,791	2,543	518	80	434	36	550
1935	54,666	9,720	3,541	708	80	484	32	596
1936	70,752	9,884	4,003	954	105	389	39	533
1937	64,772	7,905	4,212	966	88	436	41	565
1938	68,841	8,199	5,394	851	103	498	41	642
1939	72,186	8,895	4,585	905	72	577	41	690
1940	75,712	9,032	4,232	852	112	506	33	651
1941	62,963	7,125	4,557	958	146	518	41	705

COURT PROCEEDINGS: VICTORIA, 1934 TO 1980—*continued*

Year	Magistrates' Courts *(a)*		Children's Courts *(b)*		Higher courts *(c)*			
					Number of persons convicted for —			
	Convictions	Dismissals, etc. *(d)*	Convictions	Dismissals, etc. *(d)*	Offences against the person	Offences against property	Other offences	Total offenders convicted
1942	61,097	5,705	5,414	860	167	531	23	721
1943	57,205	6,210	5,156	878	180	597	49	826
1944	52,517	5,186	4,422	547	166	586	40	792
1945	49,270	5,322	3,831	726	156	492	44	692
1946	53,616	5,738	3,007	589	150	495	65	710
1947	63,488	5,694	2,598	427	172	566	47	785
1948	65,906	5,852	2,337	425	185	572	49	806
1949	70,034	5,841	2,382	503	132	494	43	669
1950	85,568	6,966	2,305	724	190	495	37	722
1951	95,294	8,269	3,075	778	212	515	34	761
1952	112,077	11,166	3,457	720	202	631	50	883
1953	117,901	10,699	3,596	646	185	670	63	918
1954	117,458	10,544	4,461	864	266	594	52	912
1955	129,141	12,697	4,434	826	288	672	83	1,043
1956	153,393	13,370	5,476	1,036	247	901	101	1,249
1957	201,539	11,750	6,586	1,433	376	1,098	169	1,643
1958	242,897	13,237	8,168	1,488	481	1,143	155	1,779
1959	258,078	16,590	8,235	1,521	449	1,187	163	1,799
1960	237,338	15,530	9,688	1,787	549	1,250	197	1,996
1961	199,880	17,224	10,036	1,885	569	1,512	226	2,307
1962	207,405	17,196	12,082	2,008	636	1,420	331	2,387
1963	227,211	16,926	7,855	545	565	689	525	1,779
1964	244,045	18,731	9,787	664	629	589	575	1,793
1965	262,249	21,289	9,555	533	539	561	518	1,618
1966	246,539	21,537	8,786	490	454	714	557	1,725
1967	253,191	25,162	9,270	552	430	818	538	1,786
1968	258,370	27,398	9,113	537	477	793	520	1,790
1969	261,019	37,252	10,973	684	445	797	447	1,689
1970	256,556	36,819	12,944	947	499	839	414	1,752
1971	249,880	37,488	13,061	780	491	916	303	1,710
1972	269,237	38,672	14,720	1,025	523	882	362	1,767
1973	289,614	40,380	14,181	1,073	571	851	427	1,849
1974	304,064	40,929	15,875	1,303	515	724	332	1,571
1975	293,532	38,656	13,915	1,149	448	548	396	1,392
1976	296,482	38,435	11,182	757	527	405	299	1,231
1977	307,831	38,561	11,633	651	456	361	343	1,160
1978	323,105	39,757	14,229	838	439	355	376	1,170
1979	305,323	40,044	15,918	1,143	386	411	427	1,224
1980	310,105	50,165	17,927	1,018	386	455	449	1,290

(a) Known as Courts of Petty Sessions prior to 1970.
Offences dealt with: 1934 to 1980 arrest and summons cases.
1934 to 1940 includes Children's Courts summons cases (also included in Children's Courts figures).
1934 to 1935 first offence cases of drunkenness were not included as convictions and are excluded.
1961 to 1980 excludes drunkenness cases.
(b) 1934 to 1962 includes prosecutions by police and by other authorities, e.g., Victorian Railways.
1963 to 1980 police prosecutions only and excludes children brought before the courts as being in need of care and protection.
1965 to 1980 excludes drunkenness cases.
(c) 1934 to 1980 number of persons convicted.
1938 to 1980 arrest and summons cases.
In February 1963 amendment to the Justices Act empowered Courts of Petty Sessions (Magistrates' Courts) to deal summarily with certain offences previously dealt with by higher courts.
(d) Dismissed, withdrawn, struck out.
NOTE. An amendment to the Justices Act, operative since February 1963, enables Magistrates' Courts to deal summarily with certain offences previously dealt with by higher courts. Also, improved methods of statistical collection were commenced in 1963. Accordingly, figures since 1963 are not comparable with those of previous years. All tables from 1971 have been revised to accord with the Draft Australian National Classification of Offences developed by the ABS, and will differ slightly from those previously published for these years.

Supreme Court

The great increase in this Court in civil jury actions over the last fifty and in particular over the last thirty years has been accompanied by some decrease in other jurisdictions. In particular, the once common applications for judicial aid and protection by way of originating summons in the construction of wills and other documents have markedly diminished. This is partly due to an abandonment by solicitors of prolixity in drafting, and by clients of their efforts to control the destination of their property long after death.

It is also due to the increasing use of the power in the Supreme Court to alter a will so that adequate provision is made for the proper maintenance of the family of the deceased person.

Another feature peculiar to the Supreme Court has been the expansion of the function and number of Masters. (Masters are officers of the Court, junior to the judges, with partly judicial and partly administrative responsibilities.) In 1934, there was a Master in Equity and a Taxing Master. Six Masters now have an extensive jurisdiction in interlocutory matters preliminary to trials, doing much of the work which once was done by the judge sitting in chambers.

Divorce and matrimonial causes in the post-war years occupied a steadily growing proportion of the Supreme Court's time. The (Commonwealth) *Matrimonial Causes Act* 1959, enacting a uniform divorce law, which came into force on February 1961, left the jurisdiction under the Act to the Supreme Courts of the States. A more liberal judicial approach and changed social attitudes contributed to the increase in divorce. The (Commonwealth) *Family Law Act* 1975, which came into operation in 1977, substituted for the several grounds of divorce, based mainly on fault, the one ground of the irretrievable breakdown of the marriage. This led initially to a flood of work for the Supreme Court. However, the taking over of the jurisdiction by the Family Court relieved the Supreme Court of this burden.

State and Federal jurisdictions

The institution of a system of Commonwealth Courts including the Family Court and the Federal Court of Australia has brought about a situation in which upon occasion no one Court is able to administer the whole of the law of the land in the one case between the litigants who are in dispute.

This is particularly so in the area of Family law. As a result of the provisions of the Commonwealth Constitution, the Family Court has (in effect) exclusive jurisdiction in all matters arising out of a matrimonial relationship, but not otherwise, while State Supreme Courts retain jurisdiction where the matters do not arise out of a matrimonial relationship. This had led to painful problems in relation to the custody of children.

It has been held that the Federal Court of Australia has jurisdiction in circumstances in which a ground of claim does not attract Federal jurisdiction but seeks substantially the same remedy and is based on substantially the same facts as a claim which does attract Federal jurisdiction. This remains so even where the claim within Federal jurisdiction has failed. The jurisdictional situation resulting from this decision may have significant ramifications for the work of State Supreme Courts.

Appeals to the Privy Council

In 1934, there were appeals to the Privy Council from the High Court and from State Supreme Courts. By 1975, there was no appeal to the Privy Council from the High Court (in practice) or from a State Supreme Court exercising Federal jurisdiction. In cases in a State Supreme Court involving only State law it was possible to appeal direct to the Privy Council. The Privy Council in 1980 decided that in appeals from Australia it would follow decisions of the High Court unless convinced beyond a doubt that they were wrong. This meant that there was seldom potential advantage for an appellant to take an appeal from a State Supreme Court to the Privy Council instead of the High Court.

County Court

The County Court has been subject to substantial changes since 1934. First, for a series of County Courts established in various places in the State, there was substituted in 1957 one County Court of Victoria. Second was the abolition in 1969, of the Courts of General Sessions in and for various Bailiwicks in the State, which had an extensive criminal jurisdiction and a jurisdiction on appeal from Magistrates' Courts in criminal, maintenance, and affiliation proceedings; their jurisdiction was transferred to the County Court of Victoria. The County Court judges had been the judges who sat as Chairmen of General Sessions. In 1969, the County Court also absorbed the Court of Mines.

In the absence or unavailability of a judge of the (Federal) Court of Bankruptcy, County

Court judges were able, as judges of the (Victorian) Court of Insolvency, to exercise the Federal bankruptcy jurisdiction from time to time during the period.

The administration of the Court with the growth of the number of judges led to the formal institution of the office of Chairman of County Court Judges in 1957. In 1975, statutory provision was made for a Chief Judge of the County Court.

The financial limits of the general County Court jurisdiction have risen steadily since the first increase from $1,000 as it had been in 1934 to $2,000 in 1952. At that time, the limit in motor car accident cases was raised to $5,000. In 1966, there were further increases to $4,000 and $8,000, respectively; in 1972, to $6,000 and $12,000, respectively; and in 1979, to $12,000 and $25,000, respectively. There were at the end of 1983 extensive increases in the common law and equity jurisdiction of the County Court.

The extensive criminal jurisdiction of the County Court, embracing for practical purposes all indictable offences except murder and attempts to murder, has resulted in the Court undertaking the great bulk of the criminal work of the State. In recent years the original criminal jurisdiction of the Supreme Court has rarely been exercised except in cases of murder, attempted murder, and armed robbery. County Court judges are also required to act as Chairmen of Workers Compensation Boards, the Youth Parole Board, the Police Services Board, the Industrial Appeals Court, the Market Court, and the Credit Tribunal.

LEGAL PROFESSION

The Bar

From 1934 to 1939

In 1934, Victoria had a Bar of about 100 practitioners in active private practice. The number doubled in the next 25 years. By 1979, there were 651 and as well 16 Crown Prosecutors and 9 Parliamentary Counsel. In 1982, the numbers reached 785, 19, and 11, respectively.

Barristers in 1934 practised from Selborne, Equity, and Brougham Chambers. Each barrister engaged one of the three barristers' clerks. None had secretaries. Opinions and pleadings were returned handwritten to solicitors. The Bar then provided a precarious living and almost all the legal work available was before the traditional law courts.

The Bar was a loose association of individuals. The Bar Council, called the Committee of Counsel until 1954, ruled on questions of ethics and practice and spoke on behalf of the Bar. In this period the strengthening of the association began. Rules were altered requiring an annual subscription, the election of a chairman, and the creation of sanctions for disreputable conduct.

War years, 1939 to 1945

When war began in 1939 there was immediate concern to supplement the earnings and preserve the practices of barristers on war service. Initially those accepting a brief in place of a barrister on war service, paid him one-third of the fee. That did not work well. In 1940, all those in practice signed a deed by which sixpence of every guinea received went to supplement the earnings of barristers who were servicemen. A total of $16,270 was eventually paid to 29 servicemen.

As a result of enlistments and war work, the number in practice fell to 40, too small a number to handle the work to be done. Judges recognised the difficulties and had regard to the availability of counsel in fixing hearing dates.

After 1945

Returning servicemen soon regained their practices. Continuing wartime regulations, particularly those requiring a court order for the recovery of tenanted premises, provided a lot of work. Compulsory insurance of drivers and employers greatly increased the number of claims brought before civil juries for damages for injuries on the road or at work.

Accommodation was the pressing problem of the growing Bar. Traditionally a barrister was one of a group who took chambers together. There was little suitable accommodation available in Melbourne. After six months spent reading in the chambers of a senior barrister, many newcomers practised without chambers. They had their conferences in

borrowed chambers, the corridors of Selborne Chambers, or outside the Court. By 1952, thirty-seven needed chambers. There were petitions to the Bar Council for assistance. A number of possibilities were explored but no solution was found.

In 1952, a substantially new Bar Council was elected, which accepted that it was the responsibility of the Bar itself to provide chambers for its members. This policy was continued by later Bar Councils. A company controlled by the Bar Council was formed which leased floors of suitable city buildings and provided chambers for junior barristers.

The Bar Councils of that time set the direction of the later developments of the Bar. Since then, the Bar has accepted that, through the Bar Council, it will take collective responsibility and action in areas where modern conditions show that to be necessary. Inevitably this has increased the regulation of the Bar. The Bar Council now takes responsibility for the provision of chambers, the operation of the clerking system, the level and payment of fees, a superannuation scheme, and lectures to newcomers on barristers' practical skills. Much of the work involved in this is done by committees, directors, or trustees which the Bar Council appoints, or by its salaried staff. The Bar Council itself carries an increasing workload.

Owen Dixon Chambers

In 1958, a general meeting decided that the Bar should be in one building. A new Bar company, Barristers' Chambers Ltd, with capital supplied by barristers, purchased land in William Street. Barristers sold their shares in Selborne Chambers Ltd, and Owen Dixon Chambers was built with money contributed by barristers and loans from financial institutions. In July 1961 all but twenty-five of the barristers moved into the nine storey building. Most of the twenty-five continued in Equity Chambers. There had been no barristers in Brougham Chambers since 1937 but two had their chambers in that building from 1958 to 1967.

After that, barristers were no longer prepared to practise from inadequate chambers as many had done before. The new building and chambers gave the Bar a central location which it felt made for permanence and confidence. The common room brought some of the atmosphere of the English Inns of Court.

Another four floors were added to Owen Dixon Chambers in 1965. Since then, Barristers' Chambers Ltd, as necessary, has leased space in nearby buildings, converted it to chambers, and let them to barristers. By 1983, it had 723 barristers as tenants and purchased adjoining land for future use.

The wartime shortage of barristers often led solicitors to delegate to a barristers' clerk the selection of a barrister who would be available. This approach and the influence it gave the clerks, continued after the war. Since 1960, the Bar has continually supervised and regulated the clerking system. By 1983, there were nine clerks.

General developments

After six lean years and the war years, barristers' practices took on a prosperity which, with some fluctuations, continued. At the end of the period, besides the traditional courts, barristers practised extensively before administrative tribunals. Throughout, there was a trend to specialisation. Originally barristers regarded their practices as fragile, likely to be broken by prolonged absence from practice. By the 1970s, barristers spending time at overseas universities or in other employment were resuming their practices with little loss of ground. Fees which at the beginning of the period came mainly from private sources were at the end coming increasingly from public sources—legal aid schemes, Crown Solicitors, and the Insurance Commissioner.

In 1934, although the Bar had continued as an unincorporated association since 1900, many barristers were not certain of its durability as a practical means of by-passing the legislation of 1891 which amalgamated the functions of barristers and solicitors. Many Acts of the Victorian Parliament from 1903 recognised the existence of the separate Bar. By 1978, the *Legal Profession Practice Act* 1958 had been amended to provide statutory disciplinary machinery for members of the Bar separate from that provided for solicitors.

During the 1970s, some barristers took chambers outside Melbourne. By 1982, there were small local Bars in Ballarat, Bendigo, and Geelong. No women practised at the Bar

in 1934; however, since 1949 there have always been women at the Bar; by 1979 there were thirty-one, and by 1982 there were over fifty. In the early 1980s, many barristers were quite junior; in 1976, three out of four were aged less than 45 years; in 1979, 343 had been members for less than 6 years, and the trend in that direction was clearly to continue for some time.

It was largely the influence of the Bar which retained juries to try claims for damages for personal injuries in Victoria. In 1938, the Bar's criticisms of the Supreme Court judges' alteration of the rules to limit jury trials caused a temporary rift between Bench and Bar, but the rules were annulled by the Legislative Assembly. In 1959, the Bar briefed counsel to argue before a Royal Commission for the retention of civil juries. In 1967, when the Victorian Government contemplated abolishing juries for personal injuries claims, the Bar published a book making the case for their retention. This was a significant consideration in the Government's decision not to make the change.

Solicitors

In 1934, Victoria's 917 solicitors faced times of anxiety and uncertainty. Their incomes were suffering from the Depression, a situation that changed little until the Second World War. There were 51 practising solicitors per 100,000 of population in 1933, the same as in 1870; but the community was by then far less litigious. In 1870, when the population was 723,925, the number of Supreme Court writs issued was 5,583 compared with 634 writs in 1934 when the population was 1,836,660. Corresponding figures for County Court hearings were 11,866 writs in 1870 and 503 in 1934.

The decline was attributed to the cost of litigation and the tendency by Victorian solicitors, which still continues, to encourage clients to settle their differences out of court. The decline in litigation had for a time been offset by growth in conveyancing work and probate work (wills and estates). But both these areas of work had been seriously affected by the Depression. The value of new mortgages had declined from $40m in 1925 to $13m in 1933. Finance for housing was difficult to obtain.

There were also many tasks now carried out by non-legal specialists and institutions, which had once been the exclusive domain of lawyers. These included functions now carried out by accountants, patent agents and attorneys, trustee companies, managers and valuers of landed estates, estate agents, company secretaries, company solicitors, and security clerks in banks. The Law Institute of Victoria (the governing body of solicitors which had been founded in 1859) instigated an amendment to the Legal Profession Practice Act in 1936 in order to make separate trust accounts compulsory for solicitors, and in 1942, to make it a criminal offence for a solicitor to have a deficiency in his trust account. The role of the Institute was extended considerably by the amending Act of 1946, which gave it the right to control the professional conduct of every solicitor in Victoria and to issue solicitors with practising certificates. All practising solicitors were thus eligible automatically to be members of the Institute. The Act also provided for compulsory audits of solicitors' trust accounts and established a Guarantee Fund to compensate clients for any defalcations by solicitors or their employees. All solicitors were required to contribute to it.

A period of expansion both for the profession and its Institute began after 1947. Repatriation of the Armed Forces, housing, rent control, the transition from wartime regulations, the rising incidence of taxation, industrial expansion, and the growing economy all increased the demand for legal services. Solicitors had to enlarge staffs, instal more office equipment, and improve accommodation and facilities.

In the early 1950s, the Guarantee Fund became inadequate for all exigencies, and it was proposed that interest could be obtained from the very large amounts deposited with banks in solicitors' trust accounts to provide adequate amounts of money for this purpose, especially as uninvestable money flowing in and out of solicitors' trust accounts from day to day never fell below a certain level. The Institute thus instigated legislation in 1964 by which a portion of all solicitors' trust money was deposited for investment by the Institute. The interest, amounting to some millions of dollars, was paid to the Fund. Income not required for the purposes of the Fund was allocated to finance legal aid and to the Victoria Law Foundation for legal research and education. This legislation was eventually followed in all other States, New Zealand, and other countries.

Meanwhile, the Institute had expanded so much that new premises had to be found. A two storey building with a comprehensive library was built opposite the Supreme Court in 1962. This was adequate for the growth of the profession and the Institute's activities in professional conduct, law reform, legal aid, legal education, and the general standing of solicitors.

By 1975, there were new problems, mainly arising from changing economic circumstances. With 3,227 practising solicitors (87 per 100,000 of population), there were fewer professional openings; unemployment was increasing; and the price squeeze caused by rising overheads and fixed fees was more pronounced. There was also some competition from marketed conveyancing "kits" and divorce "kits" (the latter being no longer required when the Family Law Act simplified divorce procedures). The profession generally needed to master new techniques in office management, electronic equipment, word processing, and microfilming. New services to the profession after 1977 also included management advice, continuing legal education (particularly in relation to the efficient and profitable conduct of a practice), advice for and referral of people with legal problems, and an expanded costs advisory service. Office inspectors were appointed by the Institute to make spot checks on trust accounts; this gave advice and helped simplify accountancy procedures in legal offices. Compulsory indemnity insurance was introduced in 1978 to cover claims for mistakes or negligence.

The Legal Profession Practice Act was amended in 1979 to enforce an even stricter code of ethical conduct. A new disciplinary tribunal was established with lay representation, and a lay observer was appointed to deal with complaints by the public about the Institute's handling of any matters referred to it.

The Institute experienced its greatest misfortune on 22 June 1978 when its building in Little Bourke Street was razed by fire. The library with many valuable artefacts and documents was destroyed. Records fortunately were preserved in their metal filing cabinets, and two days later the Institute was again operative in rented premises in Queen Street. Eighteen months later it had acquired, redesigned, and refurbished the building in which it is now housed at 470 Bourke Street, Melbourne, the site where Victoria's first Parliament sat in 1851.

The placement of qualified solicitors was the Institute's most serious problem in 1980. The number of practising solicitors per 100,000 of population had risen to 116, and it was estimated that 20 per cent of qualified lawyers could not be placed in the profession.

VICTORIA POLICE

Introduction

During the past 50 years many profound changes have occurred in the organisation, structure, and operating philosophy of the Victoria Police Force. In general, major changes have been concerned with the progressive introduction of new technological advances to police operations together with organisational changes necessary to administer a numerically large Force effectively and the expansion of training programmes to better equip police at all levels for the demands of their role. The Police Force has sought to become increasingly sensitive to the community environment in which it functions. Developments over the period have largely been in response to pressures and demands generated by the community. These pressures led to various internal administrative problems. Since 1934, there have been three inquiries into major aspects of policing: the first in 1936, the second in 1971, and the third in 1975. The first was occasioned by various problems of administration, the second by its handling of abortion matters, and the third by allegations into police probity.

Police role

Traditionally the role of the police has been described as "the prevention of crime and the detection and apprehension of offenders". However, this has progressively given way to a wider definition based upon a growing realisation on the part of police administrators that the police function is extremely complex and embraces more than merely enforcing the criminal law. The Victoria Police provides a broad service to the community and the non-crime related duties of the police have been estimated to be as high as 80 per cent of

all police duties. These include providing assistance in times of natural disaster, traffic regulation, and meeting a variety of requests for help and assistance. The Force has come to be regarded as a multi-purpose assistance providing organisation. This is due largely to the police being a 24 hour service with its personnel being widely distributed throughout the State.

The welfare role of the Force can best be seen where juveniles are concerned. Since the early seventies, police have placed a greater emphasis on formally "cautioning" juvenile first offenders in the presence of their parents without recourse to the courts. The cautioning programme has been evaluated and in terms of subsequent offences has been regarded as successful. The police have also come to realise that a good deal of discretion is required when dealing with adult offenders involved with only minor offences.

Operational concepts

In the late 1930s, the police developed the notion that their efficiency could be improved by lowering the response time for calls for police service. This was to be done by increasing the strength of the motorised Wireless Patrol Fleet and upgrading the communications network. It was assumed that this would increase the chances of an offender being apprehended at the crime scene, thereby lowering the crime rate through deterrence based on certainty of apprehension; and as a result citizen satisfaction with police service would be enhanced.

However, the Victoria Police later responded to American research which questioned these assumptions and from 1965 initiated a number of local evaluative projects. As a result of projects such as the Prahran Preventative Patrol Experiment and the assessment of beat police operations known as "Crime Beat", it was found that police service can be made more effective by developing regular and planned foot patrol operations designed to improve the quality of police contacts with the public. It is now known that the majority of crimes are resolved through the co-operation of citizens who are able to provide information to the police. The isolation of police from the community in motor cars and police stations is progressively being replaced by a re-integration of the police into the community. This is being supported by public relations programmes and providing advice to the community about ways to minimise the risk of criminal attacks on persons and property.

POLICE STRENGTH: VICTORIA, 1934 TO 1982

Year	Number of police			Per 100,000 mean population
	Males	Females	Total	
1934	2,162	8	2,170	118.6
1935	2,239	8	2,247	122.2
1940	2,311	8	2,319	122.0
1945	2,094	12	2,106	105.0
1950	2,730	21	2,751	124.5
1955	3,075	34	3,109	123.3
1960	3,868	55	3,923	137.3
1965	4,313	56	4,369	138.0
1970	4,701	69	4,770	138.2
1975	5,878	278	6,156	162.5
1980	7,274	540	7,814	199.6
1981	7,447	603	8,050	203.8
1982	7,626	676	8,302	207.9

Objectives

In the 1970s, managerial objectives of the police service were clarified and this, in turn, has had an impact on the style of policing. For many years the crime clear-up rate was regarded as the primary determinant of police efficiency, with the margin for success being the successful clearance of 50 per cent of all reported crimes. This was found to be unrealistic and has given way to an assessment of efficiency based on the general level of security felt by people within the community. It was found in the Prahran Preventative

Patrol Experiment that a police strategy based on a visible police presence in the sense of "Crime Beat" operations is positively correlated with increased feelings of security.

Criminal investigation

Since 1934, detective operations have changed from a situation more or less based upon *ex post facto* inquiry to one involving specific criminal investigations supported by increasingly sophisticated intelligence resources. More use is made of the "Task Force" approach, whereby special teams are made up of members of various branches of the Force concentrating on specific types of crime. This strategy has been found to be highly successful. These developments have occurred as a result of criminals becoming more resourceful and better organised and, consequently, more difficult to apprehend.

Interstate and international mobility of criminals has added to problems encountered by police in organised crime, and various interstate and international co-operative arrangements have been established. These have included the creation of the Australian Bureau of Criminal Intelligence as a joint State and Federal Police unit, and an increased use of Interpol and other overseas police resources.

Women police

One of the most significant changes in the past 50 years has concerned the status of women police. In 1934, there were only eight policewomen and they were concerned mainly with neglected children and escorting female prisoners. In December 1982, the policewomen strength was 676. As a result of the Equal Opportunities Act of 1978, they have been fully integrated into the Force.

LAW DEPARTMENT

The various social and economic changes outlined elsewhere in this Chapter have influenced the activities of the Law Department since 1934. Not only have the existing operations of the Department been altered, but a number of new operations have been introduced. The Law Department has always consisted of a number of diverse operations, and in recent times this situation has been highlighted by the dissolution of the original "umbrella" Department, the Chief Secretary's Office, in 1979.

The workload within the Corporate Affairs Office has increased during the fifty year period and this trend can be in part attributed to the economic prosperity of the 1950s and 1960s. The increased workload has also been accompanied by a change in the nature of the work performed. In 1934, the Office was a part of the Registrar General's Office and performed a registration function only. By 1983, the Corporate Affairs Office was part of the National Companies and Securities Commission and played an important role in the regulation of the business community. The Titles Office also experienced an increased workload. In order to deal with this, it introduced a computerised record system.

The nature of the work performed by the courts, which is probably the best known of the Law Department's activities, has also altered since 1934. The workload has increased quite significantly, resulting in greater complexity in the administration of the courts system. This has been reflected at all levels from judges to clerks. Stipendiary magistrates, who were previously known as police magistrates and wardens, have trebled in number; judges of the Supreme and County Courts have increased in number from 13 to over 54. The method of appointment of both categories has not, however, changed. Stipendiary magistrates are still almost exclusively chosen from the Clerks of Courts who have worked within the Department for a number of years and satisfied a number of criteria as to age, experience as a Clerk, and the completion of certain subjects in Law; in 1981, however, by an important amendment, it was provided that appointees should all eventually have degrees in Law, and that the experience in Court work required need not necessarily be as a Clerk of Courts. Judges are selected from experienced barristers and are appointed by the Governor in Council on the recommendation of the Attorney-General.

The County Court workload has also changed, and the reduction in the number of County Court locations from 26 in 1934 to 18 in 1980 has been largely caused by the greater ease of communications with the greater use of the motor car. This reduction has been more than compensated for by the opening of the new County Court building in

William Street, Melbourne, in 1969, which includes 21 Courts. The new building has been a great improvement upon the previous arrangement whereby all Supreme and County Courts were located in the Supreme Court building. In recent times, a new problem has arisen regarding the security of both court buildings, and this has culminated in the passing of the Court Security Act in 1980.

Another area which has been affected by the increased popularity of the motor car has been the Magistrates' Courts. Like the County Court, this Court has seen a reduction in the number of country locations visited on a weekly basis from 226 in 1934 to less than 170 in 1980, with about 30 locations visited once or twice monthly. This reduction has in recent times been due to the development of a policy of creating regionalised courts at key centres throughout the State. The Preston Court complex was the first stage in this process, followed by the Prahran and Broadmeadows Courts. One major implication of the Department's building policy has been that, instead of opening several Courts each year, the Department now opens fewer but larger court complexes on a less regular basis. Clearly, this practice has only been possible with the advent of greater mobility of the population.

The motor car has had several other effects upon the operations of the Law Department. Not surprisingly, it has led to the general increase of Court cases heard at all levels. It has also led to the introduction of the Motor Accidents Tribunal in 1974 to hear appeals from the Motor Accidents Board in relation to questions as to whether compensation should be paid to victims of such accidents.

The collective effect of various social trends upon the number of cases heard has also affected a number of activities closely related to the operations of the Courts, including the Sheriff's Office, bailiffs, Criminal Law Branch of the Crown Solicitor's Office, Crown Prosecutors, and the Legal Aid Commission. Each of these activities has seen an increased workload and some have benefited from the introduction of new technology. For example, the selection of possible jurors, a function of the Sheriff's Office, is now done by computer.

Two other closely related branches, the Court Reporting Branch and the Government Shorthand Writers' Office, have also benefited from new technology. Many shorthand writers now use stenotype machines for the recording of Court or Tribunal hearings, and computer-aided transcription is now a possibility.

The burden caused by the growth of the Courts' workload has to some extent been eased by the activities of justices of the peace. No records of their numbers were kept until their registration commenced in 1967. Since then, their numbers have remained constant at 4,500. Their method of appointment has remained unchanged, requiring an initial recommendation from a Member of Parliament, and the qualification that the applicant is a British subject over the age of 35 years, of good character and reputation. The Department has, however, introduced a programme to provide better training for justices of the peace.

Attempts to reduce the effects of the increased workload have included the creation of new organisations and the relocation of existing functions out of the Court buildings. In 1940, the Office of Public Trustee was established to handle the affairs of protected persons and some deceased estates. Formerly, both were the responsibility of the Master in Equity within the Supreme Court.

Many social and economic changes since 1934 have led to a change in community expectations concerning the role of government. The result of these changes has been the introduction of many new and expanded activities within the Law Department. These have included the following bodies:

(1) The Patriotic Funds Council established in 1939 to oversee the fund raising efforts during the war has, since then, co-ordinated appeals, including Legacy and Poppy Day, and directed funds to worthy causes;

(2) the Metropolitan Fair Rents Board established in 1940 has dealt with the shortage of rental accommodation during and after the war;

(3) the Discharged Servicemen's Employment Board was established after the war to assist ex-servicemen to find and maintain employment and in recent years to set up small businesses;

(4) the Raffles and Bingo Permits Board was established to administer the conduct of raffles (1950) and Bingo (1977) within the State;

(5) the Registry of Estate Agents was established in 1956 to administer the licensing of estate agents and sub-agents;
(6) the Crimes Compensation Tribunal was established in 1972 to compensate innocent victims of crime; and
(7) the State Classification of Publications Board was established in 1958 to assess the suitability of publications.

Collectively, the activities of these bodies have reflected the tendency of government to set, and attempt to maintain, standards; each can be seen as a response to social and economic problems that have arisen.

Legislative changes

Since 1934, many of the longer established branches of the Department, such as the Crown Solicitor's Office, which represents the Crown in Court and provides advice to the Crown, and the Chief Parliamentary Counsel's Office, which drafts legislation, have been influenced by political developments and the stability of governments. Prior to and during the war, no major initiatives were taken by government, and the political instability between 1945 and 1952 maintained this pattern. Since 1952, there have been many changes in legislation. The Chief Parliamentary Counsel's Office has been responsible for the translation into legislation of the changed expectations concerning the Victorian Government's role.

Other political considerations, including changes in Commonwealth legislation, have also altered the nature of departmental activities. The effect upon the Corporate Affairs Office has already been noted. The advent of Family Law legislation, while significant to the Supreme Court, has also affected the work of the Prothonotary's Office, which is the administrative office of that Court.

Another significant political development was the change in the status of the Solicitor-General in 1951. Prior to this, the Solicitor-General was a Minister of the Crown. Often, the Attorney-General and the Solicitor-General were in fact one person. However, when the positions were held by two persons, it was accepted that the Solicitor-General was "constitutionally subordinate" and the Attorney-General was able to delegate responsibilities as required. The Solicitor-General was thus made responsible for stipendiary magistrates, Clerks of Courts, County Court judges, and officers of the Technical and General (Third) Division of the Victorian Public Service.

The Victorian Government decided to create a statutory position in lieu of the Ministerial post for two reasons; first, because the Solicitor-General could advise the Government and provide continuity of advice (a consideration of importance during the political instability of the 1940s and early 1950s), and second, because the Solicitor-General could appear in Court on behalf of the Government. A further compelling factor was that other States and the Commonwealth Government had statutory Solicitors-General. Thus, the Solicitor-General Act was passed in 1951 to make the office-holder a statutory appointee, with political responsibility for this action being transferred to the Attorney-General. The Solicitor-General is appointed by the Governor in Council on the recommendation of Cabinet. The first appointee, H. E. (later Sir Henry) Winneke, was appointed Chief Justice of the Supreme Court in 1965 and became Governor of Victoria in 1974.

The very diversity of the Law Department's activities has been further compounded by the dissolution of the Chief Secretary's Office in 1979 and the relocation of its functions to other departments. Between 1934 and 1979, the Office was responsible for such wide ranging activities as, for example, the Victoria Police, museums and libraries, fisheries and wildlife services, and prisons. Functions formerly undertaken by the Chief Secretary's Office were distributed to several departments in 1980, including the Law Department, the Ministry for Police and Emergency Services, the Treasury, and the Ministry of Property and Services.

During these decades of economic, social, and political change, the composition of Departmental staff also changed. The proportion of staff with tertiary qualifications grew significantly, reflecting the increasing complexity of the Department's activities and the range of Acts it administers. The complete list of Acts appears in each edition of the *Law Calendar* published annually by the Department. The range is always changing as new community expectations arise and are translated into government policy and legislation.

LEGAL AID

During the last fifty years almost every aspect of legal aid has altered radically, from its purpose to the means of providing and financing it. In 1934 it was designed, as it has been for at least the previous fifty years, to provide legal assistance to poor prisoners and paupers. Today's legal aid is far less selective. While inability to pay is still a major consideration, it is seen as only one of many barriers to the law.

The changes have been reflected, although only partly, in legislation. In 1935, legal aid was provided formally under the Poor Persons Legal Assistance Act. That Act extended and gave legislative recognition to the Rules of the Supreme Court enabling paupers to sue or defend legal proceedings, and it established the Office of the Public Solicitor. The Supreme Court Rules had been relied on by poor persons only twice in the previous twenty years. The Victorian Government thought that this was mainly because the poor did not know about the rules, and hoped that the availability of a Public Solicitor would overcome this. A person was eligible for legal aid if he proved to the Public Solicitor and the Court that he did not have property exceeding $100 in value.

The Act referred to legal aid and legal assistance but did not define them. The present legislation, the *Legal Aid Commission Act* 1978, defines both in such a way as to indicate changed perceptions of legal aid. There, legal aid includes education, advice, and information in or about the law as well as any legal services provided by a legal practitioner, duty lawyer service, legal advice, and legal assistance. (A "duty lawyer", on duty at a particular court, is available immediately to eligible persons requiring legal assistance before that court.)

The two Acts also highlight different understandings of the means of providing legal aid. The Public Solicitor was a government officer. The 1978 Act abolished the office and established a Legal Aid Commission as a statutory corporation independent of government. This process began imperceptibly with the Legal Aid Acts of 1961 and 1969, initiated and supported by both branches of the legal profession to give it a more significant role in the provision of legal aid through a Legal Aid Committee. The 1969 Act also introduced a unique method of funding for legal aid by making available portion of the interest earned on the investment of solicitors' trust funds.

The Commonwealth Government entered the legal aid area in 1974, first by providing money, then by establishing the Australian Legal Aid Office as a division within the Commonwealth Attorney-General's Department. Controversy surrounded this move, prompting increased discussion of the role and function of legal aid and the suggestion for the establishment of independent bodies to provide it. Out of this has come the Legal Aid Commission of Victoria, thirteen community legal centres, and an Aboriginal Legal Service, all with a much broader view of legal aid than existed fifty years ago.

LEGAL EDUCATION

Although some people study law as part of a general education and perhaps use what they learn in business, government or teaching, most people who study law plan to follow it as their profession. That profession is only open to a person who has been admitted to practise as a barrister and solicitor of the Supreme Court of Victoria.

The qualifications for admission are set out in Rules made by the Council of Legal Education, a body established by Act of Parliament in 1903. The Council now consists of the judges of the Supreme Court, the law officers of the Crown, two representatives each of the University of Melbourne and Monash University, and three representatives each of the Law Institute and the Victorian Bar. By convention, only eight of the judges, nominated by the Chief Justice, now attend meetings of the Council.

The ordinary qualification for Victorian candidates was for many years the degree of Bachelor of Laws at the University of Melbourne, followed by twelve months service as a clerk articled to a practising solicitor. Admission was also available to those passing prescribed law subjects at that university and serving articles for four years and, in some circumstances, to managing law clerks with long experience.

While university teaching naturally took account of important changes in the law, what was required of the student in 1945 was not very different from what had been required in 1934. However, the increase in student numbers following the end of the war in 1945

led to an increase in academic staff: the two professors of 1934 and the senior lecturer appointed in 1940 were joined by two other full-time teachers; and the number of part-time "independent lecturers", whose teaching was fitted into the intervals of busy legal practice in the city, grew from five in 1934 to fourteen in 1949.

Between 1945 and 1959, an average of sixty persons were admitted to practise each year. It became apparent in the late 1950s and early 1960s that the number of students seeking to study law was increasing rapidly. In 1961, the University of Melbourne for the first time decided to place a limit on the number of undergraduate students entering its law school. A quota of 330 was imposed, with the result that 30 suitable applicants were rejected in that year and 182 in the following year.

Monash University had opened in March 1961 and planned to establish a law school in 1964. The Council of Legal Education decided to establish its own course of instruction for those excluded by the quota. Classes were held at the Royal Melbourne Institute of Technology, with members of the practising profession teaching subjects similar to those taught at the University of Melbourne. Students attending this course were required to serve four years' articles. About 433 students completed the course between 1966 and 1979. The course was controlled by the Legal Education Committee appointed by the Council of Legal Education.

The Monash Law School opened in 1964 with 144 first year students; by 1970 it had a total undergraduate enrolment of 910, the corresponding figure at Melbourne being 1,027. The demand for legal education continued to increase and entry quotas remained at both Melbourne and Monash. Consequently, although it had been expected that the Council of Legal Education course would become unnecessary once the Monash school was established, entry to the course was not terminated until 1978. To continue the funding of the course, the Commonwealth authorities required control of the course to be transferred from the Legal Education Committee to the Royal Melbourne Institute of Technology or another tertiary institution. The Council of Legal Education terminated the course, when satisfactory arrangements along these lines could not be made.

In 1973, the number of law students enrolling at Monash exceeded the number enrolling at Melbourne and since 1977 the number graduating at Monash has been greater than the number graduating at the University of Melbourne. Thus there were 213 LL.B. degrees conferred at Melbourne in the year ending 30 June 1982, whereas 239 were conferred at Monash in the calendar year 1981.

Although at both universities half a dozen "core subjects" are compulsory, the striking change in curriculum during the 1970s was the introduction of a wide variety of optional subjects from which each student must choose. Some of these are in traditional areas of legal study, while others concern areas of law which have only developed recently or are seen as having increasing social importance. This change is in part a reflection of the other striking change of the period; the increase in the number of full-time academics, and the almost complete disappearance of teaching by part-time practitioners, on which Victorian legal education relied for so long. In 1983, Melbourne had a full-time staff of about 37, Monash of about 63.

Both universities offer a Master's degree by "course work" and minor thesis, Melbourne's dating from 1974 and that at Monash from 1973. In addition to the longer established graduate degrees by thesis and on the basis of published works (LL.M., Ph.D., LL.D.), the "course work" Master's degree is an increasingly popular form of "continuing legal education" for legal practitioners.

Difficulties encountered by students in arranging articles of clerkship and a growing belief that better methods of practical training could be devised, led to the establishment by statute in 1972 of the Leo Cussen Institute for Continuing Legal Education. This Institute is constituted by representatives of the Victorian Bar, the Law Institute, and the two universities with law schools. Since 1975, it has conducted in each year a six months course of practical training which, under the Rules of the Council of Legal Education, is an alternative to twelve months articles as a qualification for admission to practise.

The Leo Cussen Institute also conducts courses of continuing legal education for those already admitted to practise, as do the Universtity of Melbourne and Monash University and the Law Institute. Some of these courses deal with existing areas of law and legal practice; others with changes in the law.