

JUSTICE AND THE ADMINISTRATION OF LAW

INTRODUCTION

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

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

JUDICIAL SYSTEM

Victorian Judiciary

VICTORIA—SUPREME COURT AT 31 JULY 1981

Chief Justice

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

Puisne Judges

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

VICTORIA—JUDGES OF THE COUNTY COURT AT 31 JULY 1981

Chief Judge

Desmond Patrick Whelan, C.B.E.

Judges

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

Courts*High Court of Australia*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Supreme Court

The Supreme Court, as its name implies, is the supreme court of the State, having jurisdiction over all matters, civil and criminal, which have not been excluded by statute. It is established by the Constitution Act. It is the counterpart of the English Supreme Court of Judicature which embodies the Court of Appeal and the High Court. The latter is divided into three divisions—Queen's Bench, Chancery, and Family. The Constitution Act provides for the Supreme Court to consist of not more than twenty-one judges of whom one is the Chief Justice. All judges are appointed from the ranks of practising barristers of not less than eight years standing, and retire at the age of 72 years. The Supreme Court consisted of a Chief Justice and 20 puisne judges at 1 July 1981. (Judges of the Supreme Court other than the Chief Justice are called puisne judges.)

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

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

The officers of the Supreme Court are the Masters (four in 1981), the Listing Master, the Taxing Master, the Prothonotary, the Sheriff, and the Registrar of Probates. The Masters deal with various matters entrusted to them by Rules of Court made by the judges, and are responsible for the investment of money ordered to be paid into court. The Listing Master arranges the lists of cases for hearing. The Taxing Master fixes and settles bills of costs. The Masters, the Listing Master, and the Taxing Master must be barristers and solicitors of five years standing, or, in the case of the Taxing Master, of equivalent experience. The Prothonotary is virtually the secretary of the Supreme Court. Writs are issued from his office, and he has the custody of documents filed therein. The Sheriff who, like the Prothonotary is a public servant (the Masters, the Listing Master, and the Taxing Master are not under the Public Service Act), is responsible for the execution of writs, the summoning of juries, and the enforcement of judgements. There is a Deputy Prothonotary and a Deputy Sheriff at all Supreme Court circuit towns. The Clerk of Courts acts as such in each instance. The Registrar of Probates and the Assistant Registrar of Probates deal with grants of probate and administration of the estates of deceased persons in accordance with section 12 of the *Administration and Probate Act 1958*.

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

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

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

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

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

In many cases an appeal lies as of right to the High Court of Australia from decisions of the Supreme Court, but in others it can only be taken with the leave or special leave of the High Court. In some cases an appeal may be taken to the Privy Council from a decision of the Supreme Court but the leave of the Court must first be obtained. (With respect to appeals to the Privy Council from the High Court, see page 662.)

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

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

VICTORIA—SUPREME COURT: CIVIL BUSINESS

Particulars	1976	1977	1978	1979	1980
Causes entered—					
For assessment of damages	22	36	58	81	79
For trial	1,243	1,299	1,423	2,304	2,124
Number of cases listed for trial—					
By juries of six	802	1,150	1,001	1,291	748
By a Judge	644	682	681	896	657
Verdicts returned for—					
Plaintiff	180	148	180	221	275
Defendant	15	18	17	22	21
Amount awarded (\$'000)	2,488	1,815	2,144	3,449	2,605
Writs of summons issued	6,264	7,327	9,087	11,960	11,106
Other original proceedings	175	137	137	164	146
Appellate proceedings (other than criminal appeals) heard and determined—					
By Full Court	82	76	63	53	49
By a Judge	155	120	135	114	131

VICTORIA—SUPREME COURT: WRITS RECEIVED BY THE SHERIFF

Year	Possession	<i>Fieri Facias</i>	<i>Venditioni Exponas</i>	Attachment	Order to arrest, including ships	Other	Total
1976	462	997	8	1	1	20	1,489
1977	662	1,178	4	4	4	25	1,877
1978	751	1,426	6	1	5	17	2,206
1979	1,120	1,611	15	3	7	21	2,777
1980	1,226	1,805	12	3	1	15	3,062

The following tables are a new series which have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS). Because of this and changes in coverage and content, the tables cannot be compared with any previously published data by the ABS. It is proposed to prepare similar tables for some previous years which will be available on request.

VICTORIA—SUPREME COURT—TOTAL OFFENCES IN SPECIFIC CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING IN A CONVICTION OR AN ACQUITTAL: RESULT OF HEARING, 1978

Crime subdivision	Imprisonment			Other court decisions	Total convictions	Total acquittals
	One year and under	Over 1 year	Life			
Homicide	—	15	16	9	40	26
Assaults (excluding sexual assaults)	9	8	—	10	27	11
Sexual assaults and offences	—	—	—	—	—	—
Other offences against the person	2	1	—	—	3	—
Robbery and blackmail	3	86	—	12	101	3
Burglary	—	13	—	2	16	—
Fraud and deception	27	21	—	—	48	—
Receiving and unlawful possession of stolen goods	2	—	—	1	3	—
Other theft	10	39	—	2	51	2
Property damage and environmental offences	1	1	—	2	4	—
Offences against government security etc and justice procedures	2	11	—	1	14	4
Prostitution and related offences	—	—	—	—	—	—
Offensive behaviour offences	—	—	—	—	—	—
Unlawful possession of weapons	—	—	—	1	1	—
Other offences against good order	2	1	—	—	3	2
Drug offences	—	1	—	—	1	—

VICTORIA—SUPREME COURT—TOTAL NUMBER OF APPEARANCES IN COURTS OF PERSONS WHO WERE CONVICTED OR ACQUITTED: RESULT OF HEARING, RECORDED BY MOST SERIOUS OFFENCE IN SPECIFIC CRIME SUBDIVISION, 1978

Crime subdivision	Imprisonment			Other court decisions	Total convictions	Total acquittals
	One year and under	Over 1 year	Life			
Homicide	—	13	15	9	37	8
Assaults (excluding sexual assaults)	1	7	—	5	13	2
Sexual assaults and offences	—	—	—	—	—	—
Other offences against the person	—	—	—	—	—	—
Robbery and blackmail	—	33	—	9	42	1
Burglary	—	4	—	1	5	—
Fraud and deception	1	2	—	—	3	—
Receiving and unlawful possession of stolen goods	—	—	—	1	1	—
Other theft	1	1	—	—	2	1
Property damage and environmental offences	—	1	—	1	2	—
Offences against government security etc. and justice procedures	—	2	—	—	2	1
Prostitution and related offences	—	—	—	—	—	—
Offensive behaviour offences	—	—	—	—	—	—
Unlawful possession of weapons	—	—	—	1	1	—
Other offences against good order	—	—	—	—	—	—
Drug offences	—	1	—	—	1	—

County Court

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

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

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

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

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

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

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

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

VICTORIA—COUNTY COURT: MELBOURNE BUSINESS

Particulars	1976	1977	1978	1979	1980
Summonses issued	32,669	39,611	46,270	47,843	47,715
Warrants of execution issued	10,261	14,559	17,426	18,702	17,292
Appeals from Magistrates' Courts lodged	3,768	4,395	4,372	4,651	5,886
Adoption applications filed	810	817	706	650	597
Civil trials heard	3,003	3,143	2,893	2,533	3,069
Criminal trials heard	(a) 460	1,352	1,118	1,202	1,218

(a) The number of trials heard in 1976 declined because of an unusual number of lengthy hearings.

The following tables are a new series which have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS). Because of this and changes in coverage and content, the tables cannot be compared with any previously published data by the ABS. It is proposed to prepare similar tables for some previous years which will be available on request.

VICTORIA—COUNTY COURT—TOTAL OFFENCES IN SPECIFIC CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING IN A CONVICTION OR AN ACQUITTAL: RESULT OF HEARING, 1978

Crime subdivision	Fined	Imprisonment		Other court decisions	Total convictions	Total acquittals
		One year and under	Over 1 year			
Homicide	1	2	18	1	22	14
Assaults (excluding sexual assaults)	32	69	50	63	214	137
Sexual assaults and offences	63	115	141	314	633	176

VICTORIA—COUNTY COURT—TOTAL OFFENCES IN SPECIFIC CRIME
SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING
IN A CONVICTION OR AN ACQUITTAL: RESULT OF HEARING, 1978—*continued*

Crime subdivision	Fined	Imprisonment		Other court decisions	Total convictions	Total acquittals
		One year and under	Over 1 year			
Other offences against the person	3	19	12	41	75	32
Robbery and blackmail	4	28	106	66	204	47
Burglary	12	352	137	188	689	106
Fraud and deception	70	366	44	278	758	107
Receiving and unlawful possession of stolen goods	12	24	6	25	67	40
Other theft	14	131	29	127	301	61
Property damage and environmental offences	12	32	19	64	127	16
Offences against government security etc. and justice procedures	10	37	11	15	73	18
Prostitution and related offences	1	—	—	—	1	—
Offensive behaviour offences	1	12	—	—	13	—
Unlawful possession of weapons	—	4	4	1	9	1
Other offences against good order	33	27	7	20	87	34
Drug offences	3	15	8	28	54	9

VICTORIA—COUNTY COURT—TOTAL NUMBER OF APPEARANCES
OF PERSONS WHO WERE CONVICTED OR ACQUITTED: RESULT OF
HEARING, RECORDED BY MOST SERIOUS OFFENCE IN SPECIFIC
CRIME SUBDIVISION, 1978

Crime subdivision	Fined	Imprisonment		Other court decisions	Total convictions	Total acquittals
		One year and under	Over 1 year			
Homicide	—	2	13	1	16	12
Assaults (excluding sexual assaults)	21	23	29	28	101	38
Sexual assaults and offences	44	26	59	110	239	56
Other offences against the person	2	5	5	21	33	15
Robbery and blackmail	2	12	63	52	129	23
Burglary	6	40	35	59	140	14
Fraud and deception	14	32	15	54	115	18
Receiving and unlawful possession of stolen goods	11	5	4	13	33	6
Other theft	8	16	4	28	56	18
Property damage and environmental offences	10	4	9	36	59	4
Offences against government security etc. and justice procedures	10	27	5	11	53	7
Prostitution and related offences	—	—	—	—	—	—
Offensive behaviour offences	—	—	—	—	—	—
Unlawful possession of weapons	—	1	2	1	4	—
Other offences against good order	32	11	7	13	63	9
Drug offences	3	2	8	7	20	5

Magistrates' Courts

Magistrates' Courts are held at Melbourne, in many suburbs, and country centres throughout Victoria. They are presided over by stipendiary magistrates, or by justices of the peace. Two or more divisions of the Court may sit simultaneously. Stipendiary magistrates are usually appointed from the ranks of Clerks of Courts, who must have passed qualifying examinations and have had practical experience as such clerks for ten years. In certain circumstances, barristers or solicitors may also be appointed. They are members of the Victorian Public Service and retire on or before the age of 65 years but are completely independent of the Executive, as are other members of the judiciary.

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

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

In addition, three courts in the Melbourne metropolitan area are set aside to operate exclusively as Traffic Courts to hear traffic charges laid by members of the Traffic Operations Group. A Metropolitan Industrial Court constituted by specially appointed stipendiary magistrates hears charges laid under the Victorian Labour and Industry Act and committed in the Melbourne metropolitan area. Outside that area these charges are dealt with by stipendiary magistrates in Magistrates' Courts.

Magistrates' Courts which are Courts of Record and are open courts have civil as well as criminal jurisdictions.

The civil jurisdiction comprises causes of action in both contract and tort up to \$3,000 (with a few exceptions). The procedure is somewhat similar to that of the County Court, except that there is no provision for trial of actions by jurors.

It provides a simpler, convenient, and ready procedure in that orders may be made without the appearance of the complainant or the hearing of any evidence unless the defendant gives a notice of defence.

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

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

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

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

him to be tried in either the Supreme Court or the County Court, and may commit him to gaol or release him on bail, or if not so satisfied, shall discharge him. Children's Courts (see pages 670-3) hear most offences by juveniles under the age of 17 years.

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

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

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

VICTORIA—MAGISTRATES' COURTS: CASES OF A CIVIL NATURE

Type of case	1975	1976	1977	1978	1979
Civil cases—					
Number heard	174,903	146,850	133,919	133,204	139,812
Other cases—					
Garnishee	4,418	2,367	435	392	546
Fraud orders	6,572	5,105	3,686	3,748	4,233
Maintenance orders	12,703	5,374	7,427	7,416	8,629
Licences and certificates	26,990	28,770	28,092	27,259	28,348
Show cause summonses	23,110	15,070	2,083	1,472	673
Landlord and tenant	2,674	2,372	2,227	2,241	2,303
Miscellaneous	28,477	22,545	23,678	22,165	20,036

The following tables are a new series which have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS). Because of this and changes in coverage and content, the tables cannot be compared with any previously published data by the ABS. It is proposed to prepare similar tables for some previous years which will be available on request.

VICTORIA—MAGISTRATES' COURTS—TOTAL OFFENCES IN SPECIFIC CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED RESULTING IN A CONVICTION OR DISMISSAL ETC.: RESULT OF HEARING, 1978

Crime subdivision	Fined	Imprisoned	Other court decisions	Total convictions	Total dismissals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	2,186	905	1,234	4,325	3,272
Sexual assaults and offences	141	34	309	484	97
Other offences against the person	2	5	6	13	11
Robbery and blackmail	—	1	4	5	28
Burglary	563	1,039	1,335	2,937	264
Fraud and deception	1,905	1,038	2,584	5,527	848
Receiving and unlawful possession of stolen goods	740	253	529	1,522	598
Other theft	5,798	1,827	5,822	13,447	1,380
Property damage and environmental offences	1,459	178	461	2,098	357
Offences against government security etc. and justice procedures	2,276	359	515	3,150	817
Prostitution and related offences	891	34	55	980	84
Offensive behaviour offences	3,431	198	587	4,216	492
Unlawful possession of weapons	1,251	140	220	1,611	367
Other offences against good order	2,160	305	682	3,147	973
Drug offences	2,023	207	950	3,180	721

**VICTORIA—MAGISTRATES' COURTS—TOTAL NUMBER OF APPEARANCES
IN COURTS OF PERSONS WHO WERE CONVICTED OR DISMISSED ETC.:
RESULT OF HEARING, RECORDED BY MOST SERIOUS OFFENCE IN SPECIFIC
CRIME SUBDIVISION, 1978**

Crime subdivision	Fined	Imprisoned	Other court decisions	Total convictions	Total dismissals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	1,296	390	690	2,376	313
Sexual assaults and offences	102	22	173	297	27
Other offences against the person	2	4	3	9	1
Robbery and blackmail	—	1	3	4	6
Burglary	357	407	619	1,383	43
Fraud and deception	764	178	597	1,539	105
Receiving and unlawful possession of stolen goods	439	108	305	852	126
Other theft	4,360	706	3,241	8,307	465
Property damage and environmental offences	903	67	241	1,211	85
Offences against government security etc. and justice procedures	636	144	192	972	43
Prostitution and related offences	859	29	32	920	22
Offensive behaviour offences	2,630	105	384	3,119	83
Unlawful possession of weapons	760	66	115	941	51
Other offences against good order	1,710	140	399	2,249	139
Drug offences	1,077	99	502	1,678	110

Children's Court

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following tables are a new series which have been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS). Because of this and changes in coverage and content, the tables cannot be compared with any previously published data by the ABS. It is proposed to prepare similar tables for some previous years which will be available on request.

VICTORIA—CHILDREN'S COURT—TOTAL OFFENCES IN SPECIFIC
CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED
RESULTING IN A CONVICTION OR A DISMISSAL ETC.:
RESULT OF HEARING, 1978

Crime subdivision	Fined	To control of Social Welfare Department	Other court decisions	Total convictions	Total dismissals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	73	303	167	543	258
Sexual assaults and offences	11	116	103	230	28
Other offences against the person	—	3	4	7	1
Robbery and blackmail	13	71	3	87	13
Burglary	95	3,006	778	3,879	84
Fraud and deception	16	177	88	281	37
Receiving and unlawful possession of stolen goods	24	233	103	360	50
Other theft	405	5,080	1,526	7,011	196
Property damage and environmental offences	62	391	171	624	42

VICTORIA—CHILDREN'S COURT—TOTAL OFFENCES IN SPECIFIC
CRIME SUBDIVISIONS RECORDED AGAINST PERSONS CHARGED
RESULTING IN A CONVICTION OR A DISMISSAL ETC.:
RESULT OF HEARING, 1978—*continued*

Crime subdivision	Fined	To control of Social Welfare Department	Other court decisions	Total convic- tions	Total dis- missals etc.
Offences against government security etc. and justice procedures	23	159	29	211	19
Prostitution and related offences	—	—	—	—	—
Offensive behaviour offences	68	45	45	158	22
Unlawful possession of weapons	39	88	91	218	18
Other offences against good order	70	315	166	551	62
Drug offences	14	29	26	69	8

VICTORIA—CHILDREN'S COURT—TOTAL NUMBER OF APPEARANCES
IN COURTS OF PERSONS WHO WERE CONVICTED OR DISMISSED ETC.:
RESULT OF HEARING, RECORDED BY MOST SERIOUS OFFENCE IN
SPECIFIC CRIME SUBDIVISION, 1978

Crime subdivision	Fined	To control of Social Welfare Department	Other court decisions	Total convic- tions	Total dis- missals etc.
Homicide	—	—	—	—	—
Assaults (excluding sexual assaults)	44	124	75	243	20
Sexual assaults and offences	6	58	52	116	8
Other offences against the person	—	2	3	5	—
Robbery and blackmail	8	40	2	50	2
Burglary	51	1,053	330	1,434	17
Fraud and deception	9	39	27	75	2
Receiving and unlawful possession of stolen goods	14	91	70	175	10
Other theft	186	1,401	657	2,244	37
Property damage and environmental offences	32	105	73	210	6
Offences against government security etc. and justice procedures	4	90	7	101	5
Prostitution and related offences	—	—	—	—	—
Offensive behaviour offences	44	16	21	81	5
Unlawful possession of weapons	23	22	45	90	2
Other offences against good order	40	97	70	207	14
Drug offences	10	10	16	36	2

Police warnings for juvenile first offenders

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

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

The following table is a new series which has been compiled from data extracted from records of the Victoria Police. Offences have been classified in accordance with the Draft Australian National Classification of Offences developed by the Australian Bureau of Statistics (ABS). Because of this and changes in coverage and content, the tables cannot be compared with any previously published data by the ABS. It is proposed to prepare similar tables for some previous years which will be available on request.

VICTORIA—POLICE WARNINGS: TOTAL OFFENCES IN
SPECIFIC SUBDIVISIONS: AGE OF OFFENDER, 1978

Crime subdivision	Age last birthday (years)						Total
	9 and under	10 to 12	13 to 14	15	16	17 and over	
Homicide	—	—	—	—	—	—	—
Assaults (excluding sexual assaults)	1	24	39	36	41	38	179
Sexual assaults and offences	—	2	23	26	49	38	138
Other offences against the person	—	—	2	4	—	—	6
Robbery and blackmail	—	1	5	1	4	—	11
Burglary	80	500	728	284	301	124	2,017
Fraud and deception	—	12	57	45	74	53	241
Receiving and unlawful possession of stolen goods	2	33	113	73	65	43	329
Other theft	115	1,195	2,552	1,292	1,029	567	6,750
Property damage and environmental offences	28	112	167	66	106	75	554
Offences against government security etc. and justice procedures	—	1	4	7	12	17	41
Prostitution and related offences	—	—	—	—	—	—	—
Offensive behaviour offences	—	4	20	16	45	23	108
Unlawful possession of weapons	1	26	74	66	74	44	285
Other offences against good order	12	78	158	112	139	107	606
Drug offences	—	—	1	2	13	22	38

Inquests

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

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

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

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

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

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

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

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

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

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

Year	Number of inquests held
1976	1,457
1977	1,497
1978	1,361
1979	1,445
1980	1,278

Committals by coroners

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

VICTORIA—COMMITTALS BY CORONERS

Year	Murder		Manslaughter		Culpable driving			Other	
	Males	Females	Males	Females	Males	Females	Persons	Males	Females
1976	22	3	8	1	..	..	27(a)	..	1
1977	21	6	9	4	..	..	36(a)	..	1
1978	32	3	5	3	..	..	34(a)	..	—
1979	30	5	5	—	..	..	39(a)	..	2
1980	24	13	7	4	27	21	48	..	1

(a) Male and female figures were not available separately for these years.

(b) Infanticide only. Note, only women can be charged with infanticide. There were no committals for arson.

Legal profession

Introduction

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

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

Victorian Bar

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

Most Victorian practitioners choose to specialise either as barristers or as solicitors. The Victorian Bar, an unincorporated association formed in 1900, consists of those who sign the Victorian Bar roll after undertaking to practise exclusively as barristers. In August 1981, there were 723 members of the Bar, including 48 women, in full-time active practice. Six had chambers in Ballarat, Bendigo, or Geelong. Barristers appointed to the Bench remain members of the Bar.

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

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

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

Senior barristers may be appointed Queen's Counsel, who specialise in cases requiring more than one counsel and appear with a junior. There were 69 Queen's Counsel practising Bar at the Victorian Bar in August 1981.

In August 1981, nine barristers' clerks acted for varying numbers of practising barristers, ranging from about 20 to about 125 in number. Clerks and their staff inform solicitors of the availability of barristers, negotiate fees, render accounts, and provide telephone and delivery services for the barristers for whom they act. Barristers pay their clerks a percentage of fees received.

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

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

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

Law Institute of Victoria

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

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

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

Disciplinary procedures for members of the legal profession

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

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

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

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

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

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

public unless the Tribunal considers it is in the interests of justice that the hearing or part of it should be held in private.

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

Professional committees and agencies

Chief Justice's Law Reform Committee

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

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

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

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

Council of Law Reporting in Victoria

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

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

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

Council of Legal Education

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

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

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

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

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

Law Reform Commissioner

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

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

The following table shows details of the reports issued by the Law Reform Commissioner during the period from January 1975 to June 1981:

VICTORIA—LAW REFORM COMMISSIONER: REPORTS ISSUED, JANUARY 1975 TO JUNE 1981

Date of report	Title of report	Matters on which legislation was recommended
January 1975	Report No. 3—Criminal Liability of Married Persons—Special Rules	Coercion; accessories after the fact; misprision of felony; receiving stolen goods; and conspiracy.
January 1976	Report No. 4—Delays in Supreme Court Actions	Changes in the Supreme Court Act and Rules directed to promoting earlier settlements of actions, and the reduction of delays in procedures for bringing actions to trial.
June 1976	Report No. 5—Rape Prosecutions (Court Procedures and Evidence)	Reforms in court procedures and rules of evidence affecting rape trials.
December 1976	Report No. 6—Spouse Witnesses (Competence and Compellability)	Compellability of spouse witnesses to give evidence.
June 1978	Report No. 7—Innocent Misrepresentation	Extension of the remedies available where a contract is induced by innocent or negligent misrepresentation.
June 1979	Report No. 8—Pre-Incorporation Contracts	Ratification of contracts made on behalf of a company prior to incorporation.
October 1980	Report No. 9—Duress, Necessity and Coercion	Reform and statutory reformulation of the law relating to Duress and Necessity as defences in the criminal law; repeal of the law relating to coercion.
December 1980	Report No. 10—Delivery of Deeds	Reforms of the law relating to the delivery of deeds.
June 1981	Report No. 11—Unsworn Statements in Criminal Trials	Limited right of both judge and prosecution to comment on an accused's making an unsworn statement; amendments to section 399 of the <i>Crimes Act 1958</i> and section 25 of the <i>Evidence Act 1958</i> .

Australian Institute of Criminology

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

Criminology Research Council

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

Commonwealth Legal Aid Council

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

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

Legal Aid Commission of Victoria

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

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

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

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

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

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

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

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

Leo Cussen Institute for Continuing Legal Education

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

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

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

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

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

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

Victoria Law Foundation

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

The activities of the Foundation are to:

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

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

ADMINISTRATION OF LAW

Law in Victoria

Introduction

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

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

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

Law Department

Administration

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

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

Appeal Costs Board

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

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

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

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

Corporate Affairs Office

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

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

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

Court Reporting Branch

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

Crown Solicitor's Office

The Crown Solicitor is the solicitor to the Government of the State of Victoria. As such, with the assistance of his staff, he provides legal services covering almost all facets of the law including the conduct of all types of litigation, the provision of conveyancing services, and the furnishing of legal advice.

The more important functions which are performed include the preparation for trial of all criminal cases in respect of which a presentment is to be filed for an offence against the laws of Victoria. In addition, he furnishes advice to the Attorney-General, in whose name all such presentments are made, with legal advice on various matters arising out of such prosecutions.

The Crown Solicitor acts for Ministers of the Crown in civil suits which may be brought by or against them arising from the performance of the duties of their offices. He also acts in civil proceedings involving the Crown in right of the State of Victoria, some statutory authorities and the members thereof, and generally in actions involving servants of the Crown arising out of the performance of their duties. The Crown Solicitor also conducts cases in Magistrates' Courts on behalf of officers of government departments who have the responsibility to prosecute breaches of provisions of statutes and subordinate legislation.

Apart from litigious matters, the Crown Solicitor provides legal services relating to conveyancing in cases where Ministers of the Crown and government departments and some instrumentalities are concerned with the acquisition or disposal of land or interests therein. Legal services are also provided with respect to the preparation and execution of agreements which involve the Crown, Ministers, some Authorities, and Crown servants or agents.

Discharged Servicemen's Employment Board

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

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

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

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

Metropolitan Fair Rents Board and Rental Investigation Bureau

Fair Rents Boards consist of a stipendiary magistrate sitting alone and have the function of determining fair rents of prescribed premises, i.e., premises subject to control under the *Landlord and Tenant Act 1958*. The matters to which a Fair Rents Board has regard in determining a fair rent are set out in section 64 of the *Landlord and Tenant Act*. The Fair Rents Board constituted for the Melbourne metropolitan area is known as the Metropolitan Fair Rents Board.

The Rental Investigation Bureau investigates complaints in relation to alleged excessive rentals of premises not subject to control under the *Landlord and Tenant Act*. When rentals are considered to be unreasonably excessive, the Bureau may attempt to negotiate a more reasonable rental.

The *Landlord and Tenant Act 1958* was replaced by the Residential Tenancies Bill 1980 in November 1981. It is administered through the Ministry of Consumer Affairs.

Parliamentary Counsel's Office

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

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

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

Patriotic Funds Council of Victoria

This Council is established and empowered by the *Patriotic Funds Act 1958* to administer the Act and to regulate fund raising and exercise supervisory control over Victorian patriotic funds, i.e., funds for any purpose in connection with any proclaimed war. These funds (approximately 760 in number with net assets exceeding \$19m and annual income and expenditure of more than \$5m) are used principally to provide welfare assistance, aged persons homes, and clubrooms for the benefit of ex-service persons and their dependants.

The main functions of the Council are to:

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

(5) advise the Victorian Government on legislation and policy relating to patriotic funds.

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

Registrar-General and Registrar of Titles

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

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

Crimes Compensation Tribunal

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

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

Item	1977	1978	1979	1980	1981
Applications—					
Pending at 1 July of previous year	233	218	321	400	639
Further applications received to 30 June	865	1,117	1,495	1,861	2,339
Determinations—					
Final awards made	854	987	1,377	1,596	1,703
Applications refused or withdrawn	16	27	39	26	68
Applications pending at 30 June	218	321	400	639	981
Orders made for advance payments of compensation	25	—	—	—	—
Appeals from refusal of applications	1	—	—	—	—
Analysis of final awards—					
Total compensation awarded \$	754,918	1,049,014	1,346,052	1,885,310	2,331,100
Average award of compensation \$	884	1,063	978	1,181	1,369

Government Shorthand Writer's Office

The Government Shorthand Writer's Office was established in October 1854. It provides verbatim transcripts of proceedings before Royal Commissions and Boards of Inquiry, the State Industrial Appeals Court, the Public Works and State Development Parliamentary Committees, and various tribunals, conferences, and seminars.

Motor Accidents Tribunal

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

Raffles and Bingo Permits Board

Since the Raffles and Bingo Permits Board was established in August 1977, more than 2,000 different organisations have conducted bingo sessions in Victoria. More than 800 bingo sessions and 200 raffles are approved each week. In its first year of operation, over \$537,000 was transferred to the Hospitals and Charities Commission from the Bingo Fund into which are paid permit fees and surcharge payments from bingo games.

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

Small Claims Tribunals

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

Consumers are defined as persons, other than corporations, who buy or hire goods not for resale or for whom services are supplied. They may apply, on payment of a \$4 fee, to the registrar in the Melbourne metropolitan area, or to the clerk of a Magistrates' Court outside that area. The registrar, who provides administrative services to the tribunals, gives notice of the application to the respondent, the trader concerned, and fixes a date for the hearing of the claim. Lodgement of the application with any money claimed to be owed to the trader by the consumer precludes the issue in dispute being heard in any court unless proceedings have already been commenced.

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

Since the tribunals came into operation on 4 February 1974, a total of 17,300 claims have been lodged for determination by the tribunals.

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

Classification	1979-80		1980-81	
	Number	Per cent	Number	Per cent
Food and beverages	6	0.22	4	0.18
Clothing, footwear, and drapery	223	8.26	169	7.56
Consumer durables	603	22.35	454	20.30
Motor vehicles and other transport equipment	736	27.27	567	25.36
Building and construction	584	21.64	547	24.46
Miscellaneous products	118	4.37	155	6.93
Transport and energy services	136	5.04	110	4.92
Insurance and finance	51	1.89	17	0.76
Real estate and accommodation	16	0.59	4	0.18
Miscellaneous services	226	8.37	209	9.35
Total	2,699	100.00	2,236	100.00

Market Court

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

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

Estate Agents Board

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

The Board also controls the Estate Agents Guarantee Fund, from which financial reimbursement is made to persons who have been defrauded by an estate agent.

Office of Finance Brokers, Money Lenders, and Auctioneers

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

State Classification of Publications Board

The State Classification of Publications Board was established under a section of the *Police Offences Act* 1958. The function of the Board is to determine whether publications are suitable or unsuitable for persons under the age of 18 years.

Office of the Public Trustee

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

The Public Trustee may also be appointed executor of the Will of any person who dies without leaving a Will. In such cases, he manages the estate and distributes the assets among the beneficiaries.

Companies Auditors Board

The Companies Auditors Board was established by the *Companies Act* 1961. The Board is responsible for the registration and discipline of company auditors and liquidators.

Victorian Taxation Board of Review

The Victorian Taxation Board of Review was established under the *Taxation Appeals Act* 1972. Its functions are to review decisions made by the following bodies:

- (1) Commissioner for Land Tax, in relation to land tax payable under the *Land Tax Act* 1958;
- (2) Controller of Stamp Duties, in relation to stamp duty payable under the *Stamps Act* 1958;
- (3) Commissioner of Probate Duties, in relation to probate duty payable under the *Probate Duty Act* 1962;
- (4) Commissioner of Gift Duties, in relation to gift duty payable under the *Gift Duty Act* 1971;
- (5) Commissioner of Pay-roll Tax, in relation to pay-roll tax payable under the *Pay-roll Tax Act* 1971; and
- (6) Commissioner for Business Franchises, in relation to business franchises payable under the *Business Franchise (Tobacco) Act* 1974 and *Business Franchise (Petroleum Products) Act* 1979.

Licensing legislation

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

The Licensing Court of three members was replaced by the Liquor Control Commission of four members, the chairman being a judge of the Liquor Control Commission. Numerous alterations were made in the licensing law and practice of the State, the new Act completely re-writing the law. All fees taken under the new Act and all fines, penalties, forfeitures, and money incurred or accruing under it are paid into the Licensing

Fund into which was also paid the amount standing to the credit of the Licensing Fund established under the *Licensing Act 1958*. A complete new code of compensation payable to owners and occupiers of licensed premises deprived of licences is set out in the Act, and provision is made for all payment of compensation out of the Licensing Fund, as well as all costs incurred in connection with the administration of the Act. Where the money remaining in the Licensing Fund on 30 June in any financial year is greater than the money therein on 1 July in that financial year, the surplus is to be transferred into the Consolidated Fund.

VICTORIA—NUMBER OF LIQUOR LICENCES AT 30 JUNE

Type of licence	1976	1977	1978	1979	1980
Hotel keeper	1,442	1,441	1,435	1,432	1,431
Club	437	452	459	469	479
Retail bottled liquor	727	728	731	744	751
Wholesale liquor merchant	101	102	102	105	109
Australian wine	14	13	13	13	13
Vigneron	41	51	65	67	70
Brewer	7	7	7	7	7
Restaurant	266	269	287	294	317
Cabaret	24	26	29	33	42
Theatre	5	5	5	5	4
Cider tavern	1	1	1	2	3
Residential	2	3	3	3	3
Tourist facility	1	6	12	14	16
Convention facility	—	—	—	—	1
Canteen	—	—	—	—	7
Total	3,068	3,104	3,149	3,188	3,253

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

Racing legislation

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

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

VICTORIA—RACING AND TROTTING MEETINGS

Particulars	Year ended 31 July—				
	1977	1978	1979	1980	1981
RACING					
Number of meetings—					
Metropolitan courses	82	84	84	84	83
Other courses	393	389	398	397	427
Number of events—					
Metropolitan courses	655	698	702	688	672
Other courses	2,986	3,003	3,138	3,124	3,344
Amount of stakes—					
Metropolitan courses (\$'000)	5,662	6,118	7,763	8,560	8,883
Other courses (\$'000)	3,457	3,526	3,758	4,062	4,307
TROTTING					
Number of meetings—					
Metropolitan courses	53	55	55	59	60
Other courses	261	267	268	268	268
Number of events—					
Metropolitan courses	415	430	426	443	474
Other courses	2,281	2,335	2,360	2,164	2,361
Amount of stakes—					
Metropolitan courses (\$'000)	1,801	1,981	1,934	2,305	2,655
Other courses (\$'000)	2,341	2,406	2,398	2,511	2,882

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

Bankruptcies

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

Detailed statistics concerning bankruptcies are published in the annual report by the Commonwealth Minister for Business and Consumer Affairs on the operation of the *Bankruptcy Act 1966*. The thirteenth edition of this report was released in the latter part of 1980.

VICTORIA—BANKRUPTCIES

Year	Bankruptcies	Orders for administration of deceased debtors' estates	Arrangements with creditors without sequestrations	Total
NUMBER				
1976-77	393	—	82	475
1977-78	583	2	122	707
1978-79	763	2	208	973
1979-80	1,227	8	229	1,464
1980-81	1,274	5	235	1,514
LIABILITIES (\$'000)				
1976-77	7,555	—	10,479	18,034
1977-78	14,890	43	5,466	20,399
1978-79	17,272	68	8,525	25,865
1979-80	33,509	44	10,048	43,601
1980-81	39,529	409	17,420	57,358
ASSETS (\$'000)				
1976-77	2,354	—	9,120	11,474
1977-78	4,750	14	2,794	7,558
1978-79	3,456	29	4,784	8,269
1979-80	6,754	5	2,592	9,351
1980-81	4,310	8	3,894	8,212

Victoria Police*Introduction*

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

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

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

History of the Victoria Police

Police first performed duty in Victoria in 1836 when it was known as the District of Port Phillip, then comprising the southern portion of the Colony of New South Wales. This was only two years after the arrival of the first white settlers in the District and only seven years after the formation of Sir Robert Peel's "New Police" in London. At 25 May 1836, there were only three policemen to look after a white European population of 177 and an unknown number of Aborigines. As the population increased and dispersed, so

too did the number of police. It was not long before police were stationed at Melbourne, Geelong, Portland, and on the route between Melbourne and Sydney. In each case the extension of police services was made in response to requests and petitions from settlers.

The population of Port Phillip District grew steadily and by 2 March 1851 had reached 76,162. These persons were widely dispersed and were served by seven separate and autonomous police bodies, namely, the City Police, Geelong Police, Goldfields Police, Water Police, Rural Bench Constabulary, Mounted Police, and the Escort; each operated independently, without co-ordination or regular communication.

Such a system may have continued indefinitely had it not been for changes wrought by the discovery of gold. While the seven autonomous police forces found themselves unable to cope with the crime and population increases in a situation conducive to lawless behaviour, alarmed citizens looked to the Government to ensure that law and order prevailed. In 1852, a Government Select Committee was formed to report upon the state of police in Victoria. Many witnesses appeared and gave evidence and the most basic proposal, ultimately implemented, was for ". . . Police to extend over the whole colony, directed by one Chief, and having all the material of a well-organised Department". As a result of such proposals a Police Regulation Act was passed in 1853 and William Henry Fancourt Mitchell was appointed as the first Chief Commissioner of the Victoria Police Force. Victoria was the first State in Australia to amalgamate small, autonomous forces into a single State-wide police organisation.

The new Act was a precedent in that it not only set the standards required of police in Victoria, but also provided for pensions and other gratuities. To further increase efficiency in the new Force, fifty-four trained police, headed by Inspector Samuel Freeman, were recruited from London. Freeman made a valuable contribution to policing in this country by implementing a proper "beat" system.

From these small beginnings the Force expanded and gradually gained public acceptance which was not easy; the police involvement in the Eureka Stockade in 1854 and the capture of Ned Kelly in 1880 made the task even harder. The police played only a small part in the suppression of the revolt at Eureka, as the bulk of the Government force comprised military troopers. Nonetheless, Chief Commissioner MacMahon and his fledgling force were subjected to much public criticism. Similarly, Ned Kelly caused many problems for the Force because of the ineptitude of the police who hunted him. Indeed, the Detective Branch of the Force at that time was described by a later Royal Commission as being "inimical to the public interests".

Fortunately, the Force overcame such criticisms in the twentieth century under Hussey Chomley, who was the first Chief Commissioner to have been a serving, career policeman.

The early part of this century heralded changes such as the police had not experienced since the gold rushes, but this time they were caused by the development of the automobile. Police were vested with the task of registering automobiles, licensing drivers, and general traffic control. The Motor Police were established in 1912 with a strength of two men equipped with bicycles. To detect speeding motorists, these men marked out a set distance along the roadway and timed the offending motorist with a stop-watch. From such small beginnings the police traffic responsibility has kept pace with the increased use of motor vehicles. The Traffic Department now comprises some 10 per cent of the Force and is responsible for the traffic management of over two million registered vehicles and their drivers.

Development within the Force slowed during the First World War as the police became responsible for enforcing emergency wartime legislation. After the war, attention again turned to domestic affairs and in 1922 the Victoria Police experimented with the use of wireless, creating history in 1923 by being the first in the world to establish wireless communications using a touring car.

In 1923, there was another notable event. On 31 October, the Victoria Police Force experienced the only police strike in Australian history. Six hundred and thirty-six men of a total strength of 1,820 were discharged from the Force for refusing duty. The loss of valuable manpower caused by the strike necessitated the recruiting and training of several hundred men and this massive influx of recruits precipitated a period of change within the Force. Shortly after, on 12 November 1924, the first four policewomen were appointed with full constabulary powers. This innovation was one of the last made by Chief

Commissioner Alexander Nicholson, who saw out the traumatic events of the strike and subsequent Royal Commission and retired in 1925.

Nicholson was followed by a number of noted Chief Commissioners, including Thomas (later Sir Thomas) Blamey, Alexander Duncan, and Selwyn Porter. None of these men had been serving members of the Victoria Police but were astute administrators who instituted important reforms within the Force. Blamey had a distinguished military career in the First World War. Duncan had been a career policeman with the Metropolitan Force in England. Porter was a farsighted reformer who made many enduring changes. Capitalising on the innovation of his predecessor, Duncan, who had aimed his reforms at the operational level, Porter exercised many new initiatives at management level, including staff training for officers.

In 1970, Colonel Sir Eric St Johnston was invited by the Victorian Government to inquire into all aspects of policing in Victoria. His report contained more than 180 recommendations, most of which were accepted by the Victorian Government and subsequently implemented.

An inquiry into allegations against members of the Victoria Police Force was held in 1976 by Mr B. W. Beach, Q.C. This highlighted several difficulties which emerged at a time of rapid social change.

During the 1970s, the Force acquired an Air Wing, Dog Squad, Independent Patrol Group, Internal Investigations Bureau, Special Operations Group, and Computer Systems Division. Indeed, these changes indicated the adaptability of the police organisation to meet the demands of modern society. The police role is not static, the problems of narcotic drug abuse and organised crime are but two examples of areas requiring new initiatives by police.

Further reference: *History of the Victoria Police, Victorian Year Book 1961*, pp. 318-21

Organisation

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

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

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

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

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

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

A history of the Victoria Police Force, entitled *Police in Victoria 1836-1980*, has recently been published by the Victorian Government Printer.

Specialised squads

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

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

Recruitment and training

The authorised strength of the Police Force at 30 June 1981 was 8,050. Increases in authorised strength are effected by increasing the number of squads in training. Male persons between 18½ years and 35 years and females between 20 years and 35 years, who are accepted as recruits, undergo a 20 week course of training at the Police Training Academy, Glen Waverley.

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

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

Crime prevention and detection techniques

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

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

In April 1978, the Force introduced the Integrated Community Policing system in the Prahran area. Designed to increase the effectiveness and efficiency of uniform police, the system is based on the philosophy that increased police visibility decreases criminal activity and leads to an enhanced feeling of security among citizens. Many tangible benefits have resulted from this innovative scheme, including decreases in most types of offences reported; as manpower becomes available, it is proposed to extend the system to other areas.

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

Communications are constantly being improved. The Communications Centre in Russell Street, Melbourne, has grown from a small 2kW transmitter to the present D24 complex connecting all parts of Victoria. The increasing use of personal radio communication by the policeman on the beat has also improved efficiency. In addition to radio communications, telex machines are located at selected stations throughout the State, as well as radio monitors in all metropolitan stations with a 24 hour patrol capacity.

Forensic science now plays a significant role in the detection of criminal offenders. The Police Forensic Science Laboratory is equipped to provide information on drugs, poisons, flammable liquids, paints, fabrics, soils, and many other substances which by analysis may give some clue to assist in solving a crime. Blood samples taken from motor vehicle

accident victims admitted to hospital are analysed at the Laboratory for alcoholic content and the findings may result in prosecutions. A Document Examination Section is equipped to examine handwriting and documents suspected of being forged, and there is a Ballistics Section which provides information on firearms. The Laboratory also has a mobile workshop used in on-site investigations.

Road toll

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

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

Liaison committees

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

Expenditure

The operational expenses of the Victoria Police Force during 1980-81 were \$198.3m and the expenditure on capital and maintenance works was \$8.92m. The Police Training Academy at Glen Waverley, when completed, will have cost the Victorian Government about \$30m. Victorian Government expenditure on the operations of the Victoria Police Force represents a significant element of the annual Victorian Budget allocations to government departments.

VICTORIA—POLICE FORCE AT 30 JUNE

Particulars	1977	1978	1979	1980	1981
Authorised strength	6,750	7,500	7,500	8,000	8,050
Actual strength (a)	6,663	7,001	7,468	7,698	7,986
C.I.B., etc. (b)	898	961	1,058	1,114	1,223
Police-women	332	365	493	554	568
Cadets (c)	265	318	337	262	84
Reservists	133	135	142	141	126

(a) Includes police-women but excludes reservists.

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

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

THIRD PARTY LIABILITY*

Introduction

The common law of Victoria has always provided a remedy at law under which a person suffering bodily injury as a result of the tortious act of another has been able to recover a judgement in damages for the injuries received and the loss and damage suffered. The statute law of Victoria has also provided a remedy in damages for compensating the families (that is, the wife, husband, parent, and/or child) of persons who were killed as a result of the wrongful act, neglect, or default of another, in such circumstances, where had the person survived, he or she would have been able to recover damages for the injuries that in fact proved fatal.

Accordingly, with the introduction of the motor vehicle onto roadways where persons were injured or killed as a result of its negligent use, the injured and family of the deceased were able to recover judgements at law which, when satisfied, provided compensation for such loss and damage.

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

By 1939, the Victorian Parliament acted on the problem of road traffic accidents to the community. In the year ended 30 June 1938, the Victorian Government Statist's Office recorded 19,305 motor vehicle accidents which included 6,771 accidents where one or more persons were killed or injured. Deaths from such cause for the year numbered 436 and the injured numbered 7,682. In that year, approximately 40 per cent of all recorded deaths in Victoria due to accidental violence were due to the use of motor vehicles, and the number of deaths quoted above far exceeded claims paid under the Workers Compensation Act in respect of deaths arising out of employment (117). The Victorian Parliament saw that unless a person was "fortunate" enough to be injured or killed by a motor vehicle driven by a person of means, any judgement that may be recovered at law would be likely to be a hollow judgement, and provide no actual compensation for the injured and the family of those killed.

Compulsory insurance concept

The introduction of compulsory insurance by motorists against third party risks by the *Motor Car (Third Party Insurance) Act* 1939 became operative on 22 January 1941. It did not seek to disturb the basis at law by which persons who suffered loss as a result of the tortious use of motor vehicles, but provided a scheme whereby any judgement obtained would be recovered and the person suffering damages would in reality be compensated. The scheme of the Act was to require that each motor vehicle was to be covered by insurance against bodily injury or death caused by or arising out of the use of a motor vehicle.

At the time of the introduction of the Motor Car (Third Party Insurance) Act into Victoria, similar legislation had already been introduced in Tasmania (1935), South Australia (1936), and Queensland (1936).

The Victorian Act was based to a considerable extent on the 1928 New Zealand Insurance (Third Party Risks) Act. It appears that the earlier legislation on this subject was passed in Massachusetts, U.S.A., in 1926. Although the Act has been amended in a number of important respects (which are dealt with below), at November 1981 the basic scheme has not been altered in Victoria.

Legislative provisions

Central to the operation of the legislative scheme (now contained in Part V of the *Motor Car Act* 1958) is the obligation imposed on every owner of a motor car, as defined by the Act, to insure that motor car against any liability which may be incurred by the owner or any driver of the vehicle in respect of the death of, or bodily injury to any person caused by, or arising out of, the use of such a motor car. "Motor car" is defined to include every vehicle propelled by internal combustion, steam, gas, oil, or electricity, or any other power and used or intended for use on any highway and includes any articulated motor car, motor cycle, and motor tractor. In order to comply with the statutory requirement, the contract of insurance entered into by the owner must insure the owner of the motor car and any person who at any time drives the motor car (whether with or without the consent of the owner, and including a person who may be illegally using the motor car) against any liability which may be incurred in respect of the death or bodily injury to any person caused by, or arising out of, the use of such motor car in Victoria or in any other State or Territory of the Commonwealth.

Accordingly, this part of the legislative scheme does not interfere with the basic common law method of an injured person or relative recovering damages, when bodily injury or death is caused by, or arises out of, the use of a motor car. However, it provides an insurance company or fund to stand behind the negligent driver, and thereby ensures that damages will in fact be recovered by the judgement creditor who has suffered loss. When the scheme was first introduced in 1939 there were two significant limitations and restrictions which could lawfully be part of such policy of insurance.

The first was that the insurance cover provided could be limited to the sum of \$4,000 for any claim made by, or in respect of, any passenger in the motor car to which the contract of insurance related, with a maximum cover of \$40,000 for all claims in respect of such passengers. There was a grave anomaly in this provision. Whereas the insurance cover provided for a driver in respect of a passenger in the car driven by him was \$4,000, if such injured passenger could establish that his or her injuries were caused by the

negligence of the driver of another motor car, the cover provided to the driver of the other motor car would be unlimited and the entire judgement could be met. This limitation was removed in 1965.

The second limitation was that the contract of insurance required to be entered into did not need to provide indemnity to the owner or the driver of the motor car to which the contract related, against liability which may be incurred in respect of the death of, or bodily injury to, the driver or owner of such motor car. Accordingly, if the owner of the motor car was travelling as a passenger in the vehicle and he or she was injured as a result of the negligence of the driver, that driver was not covered by the compulsory policy of the insurance with respect to the owner's claim. Similarly, if the driver was injured or killed in consequence of the negligence of the owner, for example, by his failure to properly maintain the steering or braking mechanism of the car, the owner was not covered by the compulsory policy of insurance against a claim in respect of such death or injury. This limitation was removed on 12 February 1974 when other important legislative provisions came into operation and added to the general legislative scheme which are briefly dealt with below.

Recovery of damages

Accordingly, by imposing the statutory obligation on an owner to insure his or her motor car in accordance with the provisions of the Motor Car Act so as to provide indemnity for the owner or driver of the motor car in respect of any claim for bodily injury or death caused by or arising out of the negligent use of such motor car, the scheme of the Act provides that judgement in damages will be recovered by the person suffering such damage as the insurance cover provided is without limitation in practically every case (there is an exception in section 46 (2) (c), Act 6325).

The scheme of the Act provides that the person who has suffered damages is required to pursue his or her claim against the negligent driver, and such scheme is dependent upon the person who has suffered damage establishing that such damage was negligently caused by, or arose out of, the negligent use of the motor car. In the event of the judgement not being satisfied, the judgement creditor may then take proceedings and recover against the insurer of the motor car a sum equivalent to the initial judgement and costs. The legislative scheme requires each motor car to be covered by a policy of insurance, which provides unlimited indemnity to the owner or driver of such motor car against claims made in respect of bodily injury or death caused by, or arising out of, the use of the motor car. However, as part of the general scheme where a negligent owner or driver of a motor car which is insured under the scheme of the Act cannot be found after strict inquiry and search, it is provided that a person, who has suffered damage in consequence of bodily injury or death caused by, or arising out of, the use of such insured motor car, may take proceedings and recover damages against the insurer of the motor car directly. Such damages are a sum equivalent to that which would have been recovered against the missing owner or driver.

Insurance liability

To complete the scheme, provision is also made to deal with a situation where death or bodily injury is wrongfully or negligently caused by, or arises out of, the use of a motor car where the identity of the motor car cannot be ascertained (such as a hit-and-run accident); where the owner or driver of an uninsured motor car cannot be found or where the motor car is uninsured under the Act. In the above first two situations, the Act provides that the person who has so suffered damage may take proceedings and recover damages against a nominal defendant appointed by the Minister of State responsible for the administration of the Act which is usually a statutory corporation known as the "Incorporated Nominal Defendant". In the latter case, the Act provides that where the owner or driver fails to satisfy a judgement recovered against him within one month of the judgement, the judgement creditor may obtain a judgement against a nominal defendant so appointed in a sum equivalent to the judgement and costs.

The Act provides that insurers carrying on business of insurance in Victoria willing to undertake insurance business under the Act and issue policies providing the required cover to owners and drivers of motor cars, must be approved by the Minister of State responsible for the administration of the Act. Such approval can be refused, granted, or

cancelled. In order that premiums are controlled and not entirely in the hands of insurers in a situation where each motor car owner is obliged by law to insure his or her car, the legislation established a premium committee whose duty is to recommend to the Governor in Council the maximum rates of insurance for policies under the Act. In turn, the Governor in Council is empowered to make regulations fixing such premiums. In addition, the Victorian Parliament in 1939 empowered the Governor in Council to constitute and establish a State Motor Car Insurance Office to be managed and controlled by the Insurance Commissioner. The Insurance Commissioner was to be the same person who was the Insurance Commissioner under the Workers Compensation Act. The State Motor Car Insurance Office was by the Act deemed to be an authorised insurer and able to compete against private insurers. By thus establishing such an Insurance Office as a statutory corporation, the Parliament also provided that the scheme created by the 1939 Act would not break down, as there would always be an insurer with whom owners could insure their motor cars.

Claims made and recovered against the Incorporated Nominal Defendant in the circumstances referred to are required to be met by all insurers who are authorised insurers under the Act at the time of the incident giving rise to the claim in proportion to the premium incomes received by each such insurer in the previous year.

By 1981, there were no private insurers in Victoria willing to undertake insurance business under the Act, and the only remaining authorised insurer was the State Motor Car Insurance Office. Accordingly, the satisfaction of judgements recovered by persons in respect of bodily injury or death negligently caused by, or arising out of, the negligent use of a motor car became the eventual obligation of the State Motor Car Insurance Office after it became the sole insurer under the Act. However, under the scheme of the legislation, the person so suffering damage is required to pursue his or her claim in tort, initially either against the negligent owner or driver or nominal defendant appointed under the Act, and only in the case where the owner or driver of an uninsured motor car cannot be found after strict inquiry and search, is the initial claim sued against the insurer.

On the establishment of the State Insurance Office in 1975, the business and function of the State Motor Car Insurance Office was taken over and conducted by the former statutory corporation.

The scheme provided that the relevant authorised insurer of a motor car was able to take over the conduct and control of any claim made against the owner or driver with respect to whom it was obliged to provide cover, including conducting and compromising any action. However, the scheme of the legislation required that there be compulsory insurance for third party claims in respect of deaths or bodily injury caused by, or arising out of, the use of a motor car. There is no compulsion for an owner or driver of a motor car to be covered by an insurance policy against claims made in respect of property damage caused by, or arising out of, the use of motor cars.

Motor Accidents Board

A significant supplementation to the scheme of compulsory insurance against third party liability for bodily injury and death was introduced by the *Motor Accidents Act 1973*. That Act in the main became operative on 12 February 1974 and established the Motor Accidents Board which is liable to make payments to persons who have suffered bodily injury or death caused by, or arising out of the use of, a motor car. The Act was expanded and refined by an amending Act in 1979. The persons to whom the Board is liable to make payments are persons resident in Victoria who sustain injuries that are, or whose death is caused by, or arose out of, the use in Victoria of a motor car; persons who sustain injuries that are, or whose death is caused by, or arises out of, the use in Victoria of a registered motor car (which under the provisions of the Motor Car Act must be insured); and persons who sustain injuries that were, or whose death is caused by, or arises out of, the use in Victoria of a motor car the identity of which cannot be established.

For such persons to be entitled to receive payments and benefits under the Act, it is not necessary that there be established that such bodily injury or death was negligently caused by, or arose out of, the negligent use of a motor car. Accordingly, a person who

negligently drives a motor car and is thereby injured or killed (being a person referred to above) creates in the Board a liability to make payments.

Payments for which the Board is liable to make are limited. They include the payment of the major proportion of the cost of hospital, medical, and like expenses incurred for the treatment of injuries, payment for the deprivation or impairment of earning capacity (however, not exceeding the total sum of \$20,800), and payments to dependant spouses and children where death has occurred within two years of the accident under a formula provided by the Act but not exceeding in any event the above sum.

However, section 16 of the Motor Accidents Act provides important and significant limitations on the liability of the Board to make payment to a person for deprivation, or loss, of earning capacity. The Board, under that section, is not liable to make such payments to a person who is injured while: (1) driving a motor car under the influence of intoxicating liquor or of a drug if he is convicted of the same; (2) driving a motor car if he had never held a licence to drive a motor car of that class, or whose licence was at the relevant time suspended or cancelled or, while in an uninsured motor car owned by him; (3) using a motor car for, or in connection with, or in the commission of, an indictable offence, stealing or attempting to steal a motor car, resisting or preventing the lawful apprehension or detention of himself or any other person, or intentionally inflicting or attempting to inflict injury to himself or another person; or (4) in a motor car in a place other than a highway and taking part in a race or other competition or trial or testing the motor car in preparation for race competition or a trial.

Payments and benefits received by a person under the Motor Accidents Act are taken into account in the assessment of damages in an action at common law. Further, in such an action a claim for loss or impairment of earning capacity cannot be pursued unless before the commencement of the hearing of the action a claim for payment for such loss has been made under the Motor Accidents Act.

The funds of the Board, from which payments are made, are provided by the imposition of statutory surcharges on the issue and renewal of certain licences, but otherwise by authorised insurers under the provisions of the Motor Car Act.

By virtue of the provisions of the Motor Accidents Act and the Motor Car Act, the State of Victoria provides a combined legislative scheme whereby persons (with the exception of a limited class) who suffer bodily injury or death may receive payments of compensation and have a major part of medical, hospital, and like expenses met where such bodily injury or death was caused by, or arose out of, the use of the motor car, whether or not such death or bodily injury resulted from a negligent act. Further, however, it is provided that on the establishment that such bodily injury or death was negligently caused by, or arose out of, the negligent use of a motor car, then the total damage so suffered is eventually able to be recovered by the person suffering such damage under the scheme which provides compulsory insurance cover against such third party liability.

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