

JUSTICE AND THE ADMINISTRATION OF LAW

LAW IN VICTORIA

Administration

Historical

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, though for many years in a severely attenuated and autocratic form. Immediately prior to 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 prior to Federation and Victoria, like the other States, retains some sovereign powers.

Legal profession

Prior to 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 instituted legal proceedings generally. 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 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, though a few practitioners took advantage of their legal rights. These latter 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.

Legal departments and officers

The political head of the Law Department is the Attorney-General, under whose direction and control the Department functions. The Solicitor-General, who advises the Government and appears for the Crown in important constitutional, criminal, and civil cases, is a practising barrister, appointed, under the provisions of the Solicitor-General Act, by the Governor in Council, from among Queen's Counsel.

The administrative problems of the Law Department are the responsibility of the Secretary, who is a public servant. Included in the Department is the Crown Solicitor, who gives legal advice to government departments, and acts as solicitor for the Crown in all its cases, both criminal and civil. In the former, he is the instructing solicitor to the Prosecutors for the Queen, who appear for the Crown in criminal matters in the Supreme and County Courts. There were eleven such Prosecutors in 1974 who, like the Solicitor-General, are not public servants, but barristers.

Public Solicitor

The office of the Public Solicitor is controlled by the Attorney-General as head of the Law Department through the Public Solicitor who is a barrister and solicitor of the Supreme Court of Victoria.

Until 1 June 1970 the office assisted persons in civil and matrimonial matters under the Poor Persons Legal Assistance Act. That Act was repealed by the *Legal Aid Act* 1969. Legal assistance is now provided by the State of Victoria through the Public Solicitor only in the following criminal matters:

1. where any person has been committed for trial or has received Notice of Trial for an indictable offence against the laws of Victoria;
2. where any person has been charged with treason, murder, or manslaughter; and
3. to an appellant to the Full Court of the Supreme Court upon any appeal with respect to an indictable offence and to the Privy Council in respect of an offence for which he has been sentenced to death.

The Attorney-General may grant an application for legal assistance if he is of the opinion that it is desirable in the interests of justice that an applicant should have legal representation on any such proceedings and that the applicant is without adequate means to provide legal assistance for himself.

VICTORIA—PUBLIC SOLICITOR'S OFFICE : CRIMINAL CASES DEALT WITH

Year	Number of criminal cases dealt with
1969	647
1970	772
1971	813
1972	1,144
1973	1,112

Legal Aid Committee

The *Legal Aid Act* 1969 transferred some of the functions of legal assistance to poor people, previously administered by the Public Solicitor, to the Legal Aid Committee from 1 June 1970. This Committee now provides legal assistance for poor people in civil and matrimonial matters and also has universal jurisdiction to assist in any other kind of legal proceeding which cannot be undertaken by the Public Solicitor. A person who is unable to afford the services of a private solicitor may approach the Legal Aid Committee for the assignment of a solicitor under the terms and conditions of the Act. The following business was conducted by the Legal Aid Committee during 1973 :

VICTORIA—LEGAL AID COMMITTEE BUSINESS, 1973

Type of case	Number of applications	Number actually assisted
Divorce	3,333	2,174
Maintenance	4,111	2,481
Custody	368	209
Affiliation	463	316
Motor accident damages claims	864	472
Criminal (Magistrates' Courts and County Court appeals)	1,627	997
Civil causes	2,318	817
Workers compensation	259	177
Probate and testators family maintenance	206	55
Others	1,168	289
Total	14,717	7,987

Further references, 1962-1974**Voluntary legal aid in Victoria**

Regular, organised voluntary legal aid services in Victoria were initiated in December 1972 as a result of concern at some serious gaps in traditional legal aid schemes. At that time, a group of lawyers, social workers, and concerned persons combined to establish the first such organisation: the Fitzroy Legal Service. This Service opened in basement rooms of the Fitzroy Town Hall on 18 December 1972 with the aims of providing a free and readily accessible legal service to the local community; to practise preventative law; to provide legal education to the community; and to initiate and participate in law reform.

Following substantial inquiries from clients, some from as far away as Queensland, similar organisations began to emerge in other suburbs of Melbourne. Eight such voluntary services were operating regularly in Victoria by 30 June 1974, with offices situated at Fitzroy, Springvale, St Kilda, Prahran, Broadmeadows, Footscray, Nunawading, and Moe-Morwell. In addition, referral centres, concerned primarily with tenancy problems associated with Housing Commission flats, have been established along similar lines at North Melbourne, Kensington, and West Heidelberg.

The services are loosely organised, autonomous groups comprising a wide range of voluntary workers—lawyers, academics, social workers, students, typists, interpreters, etc. In all offices, an informal "store-front" atmosphere is maintained, in an effort to avoid the physical and psychological problems experienced by the clients in seeking "official" assistance. The

services receive no regular income, relying on donations from social agencies, local city councils, and workers. The Australian Government has granted \$2,000 to the Fitzroy Service, enabling it to employ a day-time administrator. All services, however, lack sufficient funds, and are actively seeking additional governmental assistance.

The services operate after normal working hours, usually five nights each week, when rostered volunteer lawyers and assistants interview clients. No means test is applied, although, because of pressure of work, geographical limits operate at most centres. A wide variety of aid is provided, including legal/general advice, letter writing, the undertaking of negotiations and, if necessary, legal representation. However, no writs are issued, and, whenever possible, clients requiring representation are referred to the Legal Aid Committee, or to the recently established Australian Legal Aid Office. Alternatively, the client is referred to other social welfare organisations concerned with specific problems. Most cases handled by the services concern matrimonial, common law, criminal, traffic, and consumer protection matters. The Fitzroy Service, with approximately sixty active members, has seen over 4,000 clients since it began operations.

All services attempt to provide a comprehensive socio-legal approach to problems, and are working towards becoming community-based organisations, staffed by and for local people. Community legal education to enable potential clients to recognise and solve their own socio-legal problems, and strong links with local community groups, are seen as important aspects of the services' future activities.

Crimes Compensation Tribunal

The *Criminal Injuries Compensation Act* 1972 established the Crimes Compensation Tribunal comprising a barrister or solicitor of seven years standing appointed by the Governor in Council. The present appointment was made on 20 June 1973, and the first applications under the Act were heard eight days later. The Tribunal is to administer a scheme designed to compensate persons who have suffered injury as a result of a criminal act. The scheme is supplementary to existing forms of compensation and not a replacement for them.

An applicant is entitled to legal representation and to payment of his legal costs if his application succeeds. In a majority of cases legal representation is not essential. As required by the Act, applications are heard informally and expeditiously, in private and without publicity unless the public interest otherwise requires. The Tribunal can and does prohibit publication in any case where it would be prejudicial to any person including the victim, any dependant of the victim, or an accused person who has not been convicted of the criminal act. No appeal lies against the amount of an award, but where the Tribunal refuses an application for an award, the applicant may appeal to the County Court.

A procedure is laid down for recovery from the offender of the amount awarded, but present experience indicates that there will be few cases where the prospects of recovery render employment of this procedure worthwhile. In cases where it can be expected that a claim for damages by the victim against the offender will succeed and result in recovery by the victim, the Tribunal may adjourn the application for compensation until the victim

has attempted such recovery, or may make a condition of the award that the victim seek such recovery. If such recovery occurs, the victim is required to make repayment to the Tribunal of the compensation moneys.

Any person who has suffered physical injury or mental or nervous shock or who has become pregnant as a result of a criminal act (any act or omission punishable at first instance by imprisonment) which took place in Victoria on or after 13 December 1972 may have an entitlement to an award of compensation from the Crimes Compensation Tribunal. The dependants of a person who has died as a result of such a criminal act may also have an entitlement to an award, and where the victim has died and there are no dependants, an award may be made to any person who incurred expenses as a result of the victim's death.

Compensation may be awarded for pain and suffering as well as material loss, the maximum award in any one case being \$3,000. In cases of need an advance payment may be made although the victim's injuries have not stabilised to the point where it is possible to make a final award. Where circumstances have changed or fresh evidence becomes available an award may be varied at any time.

Application must be made within one year after the injury or death occurs, but an extension of time will be granted in an appropriate case. No award can be made if the victim was, at the time that the injury was sustained, living with the offender as his wife or her husband or as a member of the offender's household, or if the Tribunal considers the entitlement to compensation to be less than \$50. The victim's own responsibility for the injury may be such as to cause an award to be refused, or the amount awarded to be reduced.

**VICTORIA—SUMMARY OF PROCEEDINGS OF CRIMES COMPENSATION
TRIBUNAL FOR YEAR ENDING 30 JUNE 1974**

Item	Particulars
Applications—	
Pending at 1 July 1973	9
Further applications received to 30 June 1974	503
Determinations—	
Final awards made	402
Applications refused	15
Applications withdrawn	1
Applications pending at 30 June 1974	94
Orders made for advance payments of compensation	14
Appeals from refusal of applications	..
Applications received for repayment of compensation by offenders	..
Analysis of final awards—	
Total compensation awarded	\$323,778
Average award of compensation	\$805

Small Claims Tribunal

Under the provisions of the *Small Claims Tribunals Act 1973*, the Small Claims Tribunal was established on 4 February 1974 to arbitrate in disputes between consumers and traders as an alternative to court action. Such court action is a costly and time consuming process and consumers are usually reluctant to take advantage of it, especially when relatively small amounts are involved. The procedures of the Tribunal on the other hand are based on an expeditious, inexpensive, and informal adjudication of consumer/trader disputes.

The object of the Act is to bring about settlements by compromise and direct negotiation between the trader and the claimant.

If this fails, the Tribunal is empowered to make :

- (a) an order that requires a party to the proceeding before it (other than the claimant) to pay money to a person specified in the order ;
- (b) an order that requires a party to the proceeding before it (other than the claimant) to perform work to rectify a defect in goods or services to which the claim in the proceeding relates. A settlement or an order made by a Tribunal is final and binding on all parties to the proceeding.

A claimant can, upon the payment of a \$2 fee to the Registrar or the local Clerk of Courts (outside metropolitan area only), have his case heard by a referee who can make an order against the trader of up to \$500.

The first hearing before the Tribunal took place on 18 March 1974. To June 1975, more than 1,000 claims had been referred to the Registry for hearing and orders totalling about \$30,000 had been made against traders. In about 75 per cent of claims orders had been made in favour of consumers. The majority of claims have been heard in Melbourne but hearings have also been conducted in most of the larger country centres.

Family law in Victoria*

Background and scope

The term "family" is treated here in its limited sense of being the basic social unit of husband and wife with or without children. "Family law" is concerned with the contracting of marriage, the personal and proprietary rights and duties flowing from marriage as between husband and wife, the annulment or dissolution of marriage, the relationship of parent and child (whether legitimate, illegitimate, or adopted) and the personal and proprietary rights and duties arising from such relationship.

Victoria on its establishment as a separate Colony with responsible government in 1856 inherited the common law of England, took over a few statutes from the mother Colony of New South Wales, and established its own body of laws. Although the Commonwealth of Australia was set up in 1901 and contained in its Constitution power to legislate for the whole of Australia and its Territories in regard to "marriage" and "divorce and matrimonial causes and in relation thereto parental rights and the custody and guardianship of children" this power was not exercised until 1959 in regard to divorce and matrimonial causes and not until 1961 in regard to marriage. Until Australian legislation came into effect, family relationships, rights, and duties were regulated by State law and in some instances they still are. The Supreme Court of Victoria is invested with Federal Jurisdiction under the Australian *Matrimonial Causes Act* 1959 and the *Marriage Act* 1961, and in some respects the County Court and the Magistrates' Courts have jurisdiction under the Marriage Act.

Family law in Victoria, therefore, as in other States of Australia is a dichotomy of State and Federal legislation. The celebration of marriages, their validity, their dissolution or nullification and, in proceedings in regard

* This article was written in the latter half of 1973 and is related to the legal situation as it then was. The Australian Government's *Family Law Act* 1975 was assented to in June 1975. When it comes into operation it will radically change the existing laws of divorce, maintenance, and property as described in this article.

to a marriage, the custody of children, maintenance, and settlements of property are all governed by Australian law. The adoption, guardianship, and custody of children (where there are not and have not previously been proceedings in regard to a marriage), the maintenance of spouses and children, disputes as to property between married persons, the illegitimacy of children, inheritance and testamentary provision for spouses and children are all governed by State law.

Marriage

Celebration of marriage

The celebration of marriages in Victoria is governed by the Australian *Marriage Act* 1961 and the regulations made under it. Marriages may be celebrated in Victoria by a minister of religion according to the rites of such religion who is duly registered under the Act or by a Registrar or Deputy-Registrar of Marriages or other person so authorised by the Australian Attorney-General or by a foreign diplomatic or consular officer of a proclaimed overseas country in accordance with the law or custom of that country where one at least of the parties to the marriage is a national of such country.

A marriage celebrated in Victoria by a person not in the above categories is a valid marriage if either of the parties to the marriage believed the celebrant to have lawful authority and if the form of marriage sufficiently establishes the intention of both parties to become lawfully married. Use is made of existing State administration and machinery for registration in Victoria of marriages performed within the State.

Marriageable age

The marriageable age for a male person is eighteen years and for a female person sixteen years. A male who has attained sixteen years and a female who has attained fourteen years may obtain leave from a judge or magistrate to marry a person of marriageable age in unusual circumstances.

Single status

Each party to the marriage must be single at the time of the marriage. A mistaken belief in the death of a former spouse or that a prior marriage has been dissolved will constitute a defence to a charge of bigamy but will not affect the validity of the second marriage.

Prohibited degrees of consanguinity or affinity

The parties must not be within the prohibited degrees of consanguinity or affinity. These extend to and include the third degree of relationship in each case and include relationship by half blood and adoption. Legitimacy or illegitimacy is immaterial. Leave may be granted by a judge in exceptional circumstances for persons within the prohibited degrees of consanguinity (by reason of adoption only) to marry provided the relationship is not that of parent and child or brother and sister. All persons within the prohibited degrees of affinity may obtain leave from a judge in exceptional circumstances to marry within those degrees.

Consent

Marriage must be with the full and real consent of both parties without fraud or duress, without mistake as to the identity of persons or the nature of the ceremony, and with capacity to understand the nature of marriage.

*Relief in respect of marriage**Nullity of marriage*

Petitions for relief in respect of marriage are made to the Supreme Court under the Australian *Matrimonial Causes Act 1959-1966*. A marriage is void where there is lack of capacity to contract a marriage arising in any of the above circumstances. A decree of nullity is merely the judicial recognition of an invalidity existing at the time of the ceremony of marriage. Applications for a decree of nullity of a void marriage may be made by either party or by a person having a proper interest in obtaining such a decree.

A marriage is voidable where it has not been consummated because of the inability of one or both spouses, where either party was of unsound mind or was a mental defective at the time of the marriage, where either party was at the time of the marriage suffering from a venereal disease in a communicable form, or where the wife was at the time of the marriage pregnant to some person other than the husband.

Application for a decree of nullity of a voidable marriage can be made only by a party to the marriage. Until a decree absolute is made the marriage is a valid marriage. A party to a marriage cannot petition on the ground of his or her mental disability or disease.

Dissolution of marriage

The grounds for dissolution of marriage are set out in section 28 of the *Matrimonial Causes Act* and are fourteen in number. Statistics show that the grounds of desertion for two years, adultery, separation for five years, and cruelty for one year, in that order, are the most commonly used.

All grounds with the exception of insanity, separation, and presumption of death are based on the concept of the "matrimonial offence" and represent an aggregation of the most liberal grounds available for dissolution in the various States at the time the Australian Act was passed. The introduction of the ground of separation for five years was the most significant innovation under the Act as it had existed in a slightly modified form previously in only Western Australia and South Australia. To mitigate the opposition the ground aroused, it was hedged about with a number of bars such as that a decree on this ground was not to be granted if it would be harsh or oppressive to the Respondent or contrary to the public interest or if the Petitioner had not made proper financial provision for the Respondent. The Court is required to give precedence to a petition based on any other ground where such a petition is before the Court. In practice a considerable number of divorces granted on this ground are divorces by consent in fact if not in law and the remainder are cases where the Petitioner being the "guilty" party has made proper financial provision for the Respondent and any children or where there is no claim for such provision. If there is such a claim and agreement cannot be reached in regard to it then the other spouse usually files a cross petition on a "fault" ground to strengthen his or her position in regard to financial matters. The acceptance of the ground of separation demonstrates clearly the changed social attitude to divorce and an increased willingness in appropriate cases for divorces to be granted on this ground in addition to those based on fault or guilt.

Judicial separation, restitution of conjugal rights, and jactitation of marriage

The first two remedies are relics of the Ecclesiastical law and the latter is in the nature of an injunction restraining a person from continuing to assert the existence of a non-existent marriage. A decree of judicial separation does not dissolve the marriage but merely removes from it the duty on either spouse to cohabit with the other. It is based on the same grounds as a decree of dissolution except for the grounds of separation and presumption of death. The remedy used to be applied by persons who for religious reasons did not wish to have the marriage dissolved, by those who hoped for a reconciliation, or by those who cherished less noble feelings and wished to be financially secured before instituting proceedings for dissolution, or by those who were actuated by spite or vindictiveness in refusing to institute such proceedings at all. All such persons have been equally stalemated by the introduction of the ground of five years separation which is operative whether or not a decree of judicial separation has been made. A decree of restitution of conjugal rights is a lawyer's remedy in that while it cannot be enforced, failure to comply with it constitutes a ground for dissolution of marriage. As non-compliance must continue for one year before a petition for dissolution can be filed and as only two years desertion is required for dissolution, proceedings for restitution have largely disappeared. Practically the only advantage relating to this remedy is that all matters of custody, property, and maintenance must continue or be commenced under the provisions of the Matrimonial Causes Act. No decree has been granted in Victoria since the commencement of the Matrimonial Causes Act for jactitation of marriage.

*Children**Custody and guardianship*

Custody and guardianship of children are regulated by State law unless and until proceedings are instituted under the Australian Matrimonial Causes Act. Either parent of a "child of the family" may obtain an order for its custody in a Magistrates' Court under the *Maintenance Act* 1965 as ancillary to an order for the maintenance of the parent or the child. Because of this tie to maintenance such orders are invariably sought by wives only. "Child of the family" includes an illegitimate or adopted child who is the child of both parties to a marriage or who is the child of either of them and has been accepted as one of the family by the other. An order for custody under such Act is operative until the child is sixteen years of age. A parent of a child can apply to the Supreme Court for an order for its custody and the mother of a child can in addition obtain an order for its maintenance. The mother of an illegitimate child has the *prima facie* custody of the child. Application is made under the provisions of the Victorian *Marriage Act* 1958 which have not been superseded by Australian legislation and is usually used where a maintenance and consequent custody order would not be obtainable in a Magistrates' Court. A child may be made a Ward of Court by application made under the *Supreme Court Act* 1958 and the custody of the child determined by the Court.

Once proceedings have been instituted under the Matrimonial Causes Act the custody of "children of the marriage" becomes and continues

subject to that Act. That term includes a child whether legitimate or not of both or either of the parties and an adopted child of both or either of the parties if such child was ordinarily a member of the household of the parties when cohabitation ceased. In all jurisdictions the welfare of the infant in all its aspects is the paramount consideration in the making of custody orders.

Adoption

The adoption of children is governed by the Victorian *Adoption of Children Act* 1964.

Applications for adoption can be made to the Supreme Court or to the County Court and in practice are usually made to the latter Court. The applicant or joint applicants must be ordinarily resident or domiciled in Victoria and the child to be adopted must be ordinarily present in Victoria. The Court must be satisfied that the adoption is in the interests of the child and the unrevoked free and uninduced consent is required of the parents of a legitimate child and of the mother of an illegitimate child. Parental consent can be dispensed with if the parent cannot be found, is incapable of giving consent, or has abandoned or deserted the child. An adoptive parent must be at least twenty-one years of age and, if male at least eighteen years, and if female at least sixteen years, older than the child to be adopted.

An adoption order may be discharged in the interests of the child.

When adopted the child becomes the child of the adoptive parent or parents for all civil and criminal purposes and in relation to inheritance and ceases to be the child of its natural parents for such purpose. The blood relationship remains for the purpose of the prohibited degrees of relationship in contracting marriage and in incest.

Legitimation

A child born before the marriage of its parents is now legitimated by such marriage under the Australian *Marriage Act* 1961. This applies even though such a marriage is void if either party reasonably believed at the time of the marriage that it was valid and also where such a marriage is voidable. A person may apply to the Supreme Court for a declaration that he is the legitimate child of his parents or that he or his parents or child or a remoter ancestor or descendant is or was a legitimated person.

Illegitimacy

If a child remains illegitimate its succession rights on intestacy are limited under the *Administration and Probate Act* 1958 to its mother's estate and only if the mother does not leave any legitimate issue. Such child has no claim on an intestacy to its father's estate. A mother but not a father has succession rights on intestacy against an illegitimate child's estate. An illegitimate child is presumed to be excluded from the term "children" or "issue" in any Will unless it is specifically included. The presumption can be rebutted. An illegitimate child has the right to apply for provision under the Will of its parent provided that at the death of the parent the child was totally or partially dependent on the parent or there was in existence an order against the parent for maintenance or confinement expenses. An illegitimate child ranks equally with legitimate children as a dependant in claims under the *Wrongs Act* 1958 and under the *Workers Compensation Act* 1958.

Property

Husbands and wives can sue one another in tort provided a Court is satisfied that a substantial benefit will ensue—*Marriage (Liability in Tort) Act 1968*—and in respect of contracts. A married woman can acquire, hold, and dispose of any property, can be liable in tort under a contract or for any debt or obligation, and is subject to the enforcement of judgments and orders as though she were single—*Victorian Marriage Act 1958*. Under the *Marriage Act 1958* a husband or wife is presumed to be a joint owner with the other in any property registered in the name of the other which was acquired by either or both of them whether before marriage, in contemplation of marriage, or after marriage for use as a matrimonial home. Either spouse may obtain a declaration from the Court to this effect with consequential orders as to sale in appropriate cases. This presumption is subject to qualifications and can be rebutted. A wife has no right as such to occupation of a matrimonial home the property of the husband as against a *bona fide* purchaser mortgagee or lessee. A wife is usually entitled to half the proceeds of a joint bank account whether she contributed to the account or not. Either spouse may insure the life of the other.

Maintenance prior to divorce

Under the Victorian *Maintenance Act 1965* maintenance orders may be made in a Magistrates' Court against a husband or wife for the support of the other and against a parent for the support of a child whether legitimate or not. A wife must show that she has been deserted or that the husband has failed to provide her with adequate means of support, or that he is about to leave Victoria without providing her with adequate means of support. The wife's means and earning capacity are disregarded in deciding liability. In arriving at the quantum of maintenance the Court must take into account the financial position of the parties but disregard, except in special circumstances, any earnings of the wife resulting from the desertion or neglect of the husband or his removal from Victoria. In the result a wife may obtain an order for maintenance where she is in receipt of earnings reasonable for her support.

A husband can obtain a maintenance order on the same basis but must satisfy the Court that through illness or other reasonable cause he is unable to support himself adequately.

A husband or wife may be ordered to support their child or adopted child or the child of either of them who has been accepted as a member of the family by the other. The basis of liability is the same as between husband and wife. Orders operate until the child is eighteen years of age and may be extended where the child is or will be engaged in a course of training or education.

In regard to illegitimate children, an order may be made against either the father or the mother for maintenance and in the case of the father for preliminary expenses in connection with the birth and for maintenance for the mother for a limited period.

All orders can be enforced by seizure and sale of goods or other property, attachment of debts, imprisonment (in the case of a man), and attachment of earnings. There is reciprocity between Victoria and other States for the enforcement in Victoria of orders made in other States and

the enforcement in other States of Victorian orders. Limited reciprocity exists in relation to overseas countries which in the main are countries or states at present members or former members of the British Commonwealth.

Maintenance after the institution of divorce proceedings

Once proceedings have been instituted for matrimonial relief under the Australian Act, all matters of custody, maintenance, and settlements of property fall for determination under that Act and cannot be otherwise determined. The Act requires all such claims for "ancillary relief" to be dealt with on the hearing of the proceedings in regard to the marriage on the basis that social policy requires all matters pertaining to the marriage to be decided at the same time and not piecemeal. Orders may be made in ancillary matters whatever is the nature of the relief sought in respect of the marriage and even if the marriage is void or potentially polygamous.

The Court may make orders as to custody of children, their maintenance, and the settlement on them of property, the maintenance of parties to the marriage, and the settlement on them of property, and the variation of existing settlements. The powers of the Court are set out in detail in the Act and include a provision which has been much used by which parties can agree to accept benefits or provision in a "final settlement" of claims and obligations. Such an agreement must be sanctioned by the Court to be effective and it cannot apply to maintenance for or the custody of children or to settlements on them. By such sanction the jurisdiction of the Court is ousted and the parties are subject to the ordinary law of contract in respect of their agreement. The Court in awarding maintenance for a party is bound to consider the means, earning capacity, and conduct of the parties, and all other relevant circumstances. Maintenance may be by periodic payments or a lump sum.

In ordering a settlement of property the Court is required to do what is just and equitable in the circumstances of the particular case. These provisions have been subject to considerable litigation and generally it can be said that a combination of the two guide lines is the basis on which orders have been made.

Testator's family maintenance

Death does not terminate statutory interference in the affairs of members of a family. Whether a husband or wife or parent dies leaving a Will in which proper provision is not made for a spouse or for a child (including an adopted or illegitimate child) such spouse or child can apply to the Supreme Court for proper provision to be made out of the estate. A similar application can be made where the intestacy succession laws do not make proper provision for a spouse or child. In each case it is a question of fact as to the provision, if any, received by Will or an intestacy and the discretion of the Court as to what in the circumstances is "proper provision". A divorced wife of a testator or intestate who was receiving or entitled to receive maintenance from the deceased at the date of death is included in the definition of "widow".

Functions of law in a community, 1961; Legal system in Victoria, 1961; Criminal law and its administration in Victoria, 1963; Law of torts in Victoria, 1964; Law of contract in Victoria, 1965; Law of retail sales and hire purchase in Victoria, 1966; Company law in Victoria, 1967; Law relating to export trade, 1968; Commonwealth and State taxation law, 1969 and 1970; Industrial law in Victoria, 1971; Administrative law in Victoria, 1972; Company law in Victoria, 1974

Victoria Law Foundation

The Foundation was established by an Act of the Victorian Parliament in 1967*. In moving the Second Reading of the Bill in the Legislative Assembly, the then Attorney-General described its purpose thus† :

“The Bill proposes the establishment under the name ‘Victoria Law Foundation’ of a body of impressive stature, dignity and weight having particular authority within the resources it commands to promote essential law research projects, legal education and law libraries and a general charter for moving towards the improvement of the law and its administration.”

The Foundation comprises ten members. The Chief Justice, the Attorney-General, the President of the Law Institute and, under a provision of the *Law Reform Act 1973*, the Law Reform Commissioner, are all *ex officio* members ; the Chief Justice is President of the Foundation. The two *ex officio* members first named together with the Law Institute each nominate two additional members—“duly qualified legal practitioners”—who are then appointed by the Governor in Council.

The income of the Foundation is provided under statute from the surplus in the Solicitors’ Guarantee Fund. This Fund derives the greater part of its income from the interest earned on that proportion of solicitors’ trust accounts required under statute to be deposited with the Law Institute for investment. The Foundation reports to Parliament through the Attorney-General. The first members were appointed to the Foundation in 1969, and the inaugural meeting held in October of that year. The following is a brief account of its activities since that date under each of its statutory heads.

Promotion of legal research relating to law reform

So far the Foundation has acted largely by making grants-in-aid to individuals or bodies for approved projects. It has taken a broad view of what is encompassed by the term “legal research” and of the relationship which such research must bear to law reform. Thus, in addition to grants to such bodies as the Chief Justice’s Law Reform Committee and law reform committees of the Bar Council and the Law Institute of Victoria, and to individual research workers in fields such as copyright law and compulsory acquisition of land, it has made grants for several projects in the fields of criminology and what might be called “legal sociology”. Further, it has already in two instances jointly sponsored projects with the New South Wales Law Foundation ; it may be expected that there will be other co-operative ventures of this kind, because the Act expressly contemplates that research might take place beyond the borders of the State, and its concern is with law in, not of, Victoria.

With the passing of the *Law Reform Act 1973*, the Foundation acquired a statutory responsibility to fund the operations of the Law Reform Commissioner, and it has begun to do so. The Foundation itself also intends to engage in research into law reform, in appropriate cases. To this end, and to avoid unnecessary duplication of effort, a “clearing-house” arrangement is being set up with the Law Reform Commissioner, the Chief Justice’s Law Reform Committee, and the Statute Law Revision Committee. Suitable consultative arrangements will also be entered into with

* *Legal Profession Practice (Victoria Law Foundation) Act 1967*, as amended by the *Legal Profession Practice Act 1969* (s.2), the *Legal Profession Practice (Amendment) Act 1970*, the *Legal Profession Practice (Amendment) Act 1972* (s.3), and the *Law Reform Act 1973* (s.14, and note s.11).

† *Hansard*, Vol. 286, p. 3277 (2 March 1967).

the Victorian Law Department, the Bar Council, the Law Institute of Victoria, and the law schools or departments of universities in Victoria.

Promotion of legal education

The principal object of the Foundation's concern under this aspect has been the Leo Cussen Institute of Continuing Legal Education, to which it has made large grants. There have also been significant grants for particular purposes to the law schools of Melbourne and Monash universities, to La Trobe University (for the Department of Legal Studies), and to the Institute of Legal Executives. Subsidies have been given to support special lectureships in the field of law and for other projects of a minor nature.

This is an area where the limits of the Foundation's statutory responsibilities have not been finally determined and where the relationship between Foundation financing and financing from other sources (notably, government sources) has yet to be worked out.

Assistance to law libraries

Significant assistance has been given to the law libraries of Melbourne and Monash universities, the Bar Library, the libraries in Magistrates' Courts, and the legal collections in the libraries of La Trobe University and the Royal Melbourne Institute of Technology. The Foundation is establishing its own library for the joint use of the Law Reform Commissioner and itself; a fine basic collection has been purchased, and this will be developed as a specialist library in the fields of the Foundation's statutory responsibilities.

Improving the administration of law

The most important project to have been supported so far is the Law Department's study (using management consultants) of criminal trials and criminal appeals in the County Court, Melbourne.

The Foundation has also made a substantial grant to the Law Institute for an expert survey of solicitors' earnings and expenses, which implies that this statutory head is interpreted so as to cover studies of the profession itself—its role, its functions, its organisation, and so on. Such an interpretation is of some importance, not only because this is an area which is attracting thoughtful attention overseas, but also because it is an area into which the other official law reform bodies in Victoria would not seem able to enter.

In reliance on one or other of the statutory heads, or a combination of them, the Foundation has subsidised a number of publications, either in whole or in part. The Foundation regards itself as still in the early stages of its activities. Although founded in 1967, and in operation since 1969, it has had a full-time executive director only since March 1974. The full potential of its statutory responsibilities to assist in the shaping of the State's law and legal institutions (professional and academic) remains to be explored.

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.

VICTORIA—BANKRUPTCIES

Year	Bankruptcies	Orders for administration of deceased debtors' estates	Arrangements with creditors without sequestrations	Total
NUMBER				
1969-70	489	5	111	605
1970-71	506	6	121	633
1971-72	597	5	102	704
1972-73	447	5	107	559
1973-74	270	..	74	344
LIABILITIES (\$'000)				
1969-70	5,011	20	2,052	7,083
1970-71	3,758	25	2,922	6,705
1971-72	10,623	68	3,843	14,534
1972-73	4,253	29	2,231	6,513
1973-74	2,915	..	2,507	5,422
ASSETS (\$'000)				
1969-70	1,425	6	1,822	3,253
1970-71	989	42	2,129	3,160
1971-72	3,187	14	1,773	4,974
1972-73	1,258	20	1,237	2,515
1973-74	825	..	1,459	2,284

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 became law on 1 July 1968. This Act incorporated several 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 County Court judge. 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 moneys 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 completely new code of

VICTORIA—LICENSING FUND: RECEIPTS AND EXPENDITURE
(\$'000)

Particulars	1969-70	1970-71	1971-72	1972-73	1973-74
RECEIPTS					
Fees, fines, and sale of confiscated liquor	66	63	81	88	167
Liquor licence fees	11,170	11,600	12,523	12,960	14,044
Permits, certificates, and other receipts	846	868	907	922	1,006
Total	12,082	12,531	13,512	13,970	15,217
EXPENDITURE					
Salaries, allowances, and office expenses	426	489	596	626	752
Compensation payments	336	448	290	186	35
Transfer to Consolidated Revenue	10,658	10,933	11,964	12,497	13,769
Other expenditure	661	661	661	661	661
Total	12,082	12,531	13,512	13,970	15,217

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 moneys remaining in the Licensing Fund on 30 June in any financial year are greater than the moneys therein on 1 July in that financial year, the surplus is to be transferred into the Consolidated Revenue.

VICTORIA—NUMBER OF LIQUOR LICENCES AT 30 JUNE

Type of licence	1970	1971	1972	1973	1974
Hotel	1,494	1,464	1,453	1,448	1,444
Licensed club	347	367	384	390	409
Retail bottled liquor	626	655	669	675	692
Wholesale liquor merchant	93	97	99	101	101
Australian wine	19	18	16	15	14
Canteen	1	1	1	2	2
Vigneron	12	15	19	21	28
Brewer	6	6	7	7	7
Restaurant	157	181	196	214	229
Cabaret	9	10	13	16	17
Ship	1	1	1	1	1
Theatre	1	1	3	3	3
Cider tavern	..	..	..	..	1
Total	2,766	2,816	2,861	2,893	2,948

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, trotting, and dog racing. Under the Act, control of trotting and dog racing is vested in the Trotting Control Board and the Dog Racing Control Board, respectively.

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

VICTORIA—RACING AND TROTTING MEETINGS

Particulars	Year ended 31 July—				
	1970	1971	1972	1973	1974
RACING					
Number of meetings—					
Metropolitan courses	70	68	69	70	68
Other courses	368	374	381	384	373
Number of events—					
Metropolitan courses	533	556	549	568	565
Other courses	2,660	2,666	2,612	2,795	2,779
Amount of stakes—					
Metropolitan courses	(\$'000) 2,524	2,840	2,879	3,147	3,994
Other courses	(\$'000) 1,457	1,617	1,688	1,967	2,338
TROTTING					
Number of meetings—					
Metropolitan courses	37	43	44	43	43
Other courses	201	199	202	218	218
Number of events—					
Metropolitan courses	259	323	343	337	342
Other courses	1,632	1,658	1,727	1,850	1,839
Amount of stakes—					
Metropolitan courses	(\$'000) 596	728	862	895	979
Other courses	(\$'000) 641	797	802	1,202	1,357

COURTS

The courts of justice are the base upon which administration of the legal system is built. They are graduated in status, according to the gravity of the matters which may be brought before them, and may be conveniently classified into four divisions : the High Court, the Supreme Court, the County Court (the criminal section of which was formerly called General Sessions), and the Magistrates' Courts.

High Court

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 other 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 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 are all appointed for life as is required by the Constitution as it has been interpreted by the Court.

The Constitution provided for the High Court to have jurisdiction to hear and determine appeals from all judgments, 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 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 jurisdiction of the High Court has been exercised over the years to a considerable degree in particular by the use of prerogative writs of prohibition and mandamus in relation to Commonwealth officers and to control the jurisdiction of tribunals constituted under Australian legislation, e.g., Commonwealth Court of Conciliation and Arbitration (prior to 1956), Commonwealth Conciliation and Arbitration Commission, and other bodies.

In addition the Constitution provided that the 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 Parliament, and in admiralty or in maritime matters. Pursuant to the last-named provision the Parliament of Australia has in section 38 of the

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

Judiciary Act 1903–1969 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.”

As yet it has not conferred jurisdiction on the High Court in matters arising under any laws made by the Parliament but has done so in relation to a number of particular statutes such as the Patents Act, the Trade Marks Act, and the Life Insurance Act. In addition, jurisdiction has been conferred on the High Court under the Australian Electoral Act whereby a Justice of the High Court sits as a Court of Disputed Returns.

However, although original jurisdiction has been exercised to a considerable extent over the years, the primary functions of the High Court have been, first, interpreting the Australian Constitution, and second, hearing and deciding appeals from judgments of the Courts of the States and of the Courts of Territories.

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 the 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 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 Parliament, or of an instrument made under a law made by the 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.

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 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. Since 13 August 1973, the principal seat of the High Court has been located at Sydney.

Supreme Court

The Supreme Court, as its name implies, and by virtue of the Supreme Court Act, is the supreme court of the State, having jurisdiction over all matters, criminal and civil (including probate and divorce) which have not been excluded by statute. It is the counterpart of the English Courts of Queen's Bench, Chancery, Probate, Divorce, and Admiralty. The Court in 1974 consisted of a Chief Justice and nineteen puisne judges, appointed from the ranks of practising barristers of not less than eight years standing, and retiring at the age of 72. (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 County Court.

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

The officers of the Court are the Masters (four in 1974), 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; are responsible for the investment of moneys ordered to be paid into court; and are Registrars in divorce. The Taxing Master fixes and settles bills of costs. The Masters 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 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 and Taxing Master are not under the Public Service Act—is responsible for the execution of writs, the summoning of juries, and the enforcement of judgments. 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 remedy. 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 judgment 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 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 filing 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 judgment of the Court usually provides for payment by the loser of his opponent's legal costs. Normally these are assessed by the Taxing Master. The unsuccessful party in the action has a 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 *feri facias*, addressed to the Sheriff and directing him to sell sufficient of the defendant's real and personal property to satisfy the judgment.

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*.

An appeal lies from decisions of the Supreme Court in certain cases, and with the leave of the High Court in other cases, to the High Court of Australia. An appeal from the Supreme Court or the High Court to the Judicial Committee of the Privy Council lies as of right in certain cases, and at the discretion of the Court in other cases. (See page 865.)

The following table gives particulars of Supreme Court civil business for the years 1969 to 1973 :

VICTORIA—SUPREME COURT CIVIL BUSINESS

Particulars	1969	1970	1971	1972	1973
Number of places at which sittings were held	11	11	11	11	11
Causes entered—					
For assessment of damages	10	12	19	35	28
For trial	1,496	2,015	2,312	2,577	2,215
Number of cases listed for trial—					
By juries of six	1,224	1,246	1,219	1,327	1,596
By a judge	532	527	627	725	1,042
Verdicts returned for—					
Plaintiff	115	186	160	151	165
Defendant	15	21	22	28	26
Amount awarded (\$'000)	1,108	1,495	1,161	1,118	1,612
Writs of summons issued	5,028	5,847	6,223	5,998	4,735
Other original proceedings	166	154	193	160	109
Appellate proceedings (other than criminal appeals) heard and determined—					
By Full Court	61	58	53	56	66
By a judge	142	93	135	80	87

NOTE. Changes in the civil jurisdiction of the courts and in the number of cases being settled out of court have resulted in fluctuations in court business.

The table below shows the number of writs received by the Sheriff in the five years 1969 to 1973 :

VICTORIA—WRITS RECEIVED BY THE SHERIFF

Year	Sovereign's writs against person and property	Subjects' writs against—		Total
		The person	Property	
1969	10	7	827	844
1970	4	8	913	925
1971	1	6	1,117	1,124
1972	..	16	1,241	1,257
1973	5	13	981	999

County Court

The County Court has jurisdiction in civil matters where the amount claimed does not exceed \$6,000 in ordinary cases and \$12,000 in all actions for personal injuries, whatever the cause, and in criminal cases all indictable criminal offences (i.e., broadly, those in respect of which the accused will be tried by a jury) are triable save treason, murder, attempted murder, and certain other statutory exceptions. The County Court also sits, without a jury, as an Appeals Court to hear appeals from Magistrates' Courts. County Court judges must be practising barristers of five years standing and retire at the age of 72. No judge, either of the Supreme Court or County Court, is, of course, under the Public Service Act. All are appointed by the Governor, on the advice of the Government, and once appointed become independent of the executive. In 1974 there were twenty-seven County Court judges.

The County Court sits continuously at Melbourne, and visits sixteen circuit towns throughout the State. The principal officer of the 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 for his particular town.

Particulars of County Court civil actions for the years 1968 to 1972 are shown in the following table :

VICTORIA—COUNTY COURT CIVIL ACTIONS

Year	Number of causes heard and cases tried
1968	2,266
1969	2,649
1970	2,742
1971	2,896
1972	3,484

NOTE. Changes in the civil jurisdiction of the courts and in the number of cases being settled out of court have resulted in fluctuations in court business.

Magistrates' Courts

Magistrates' Courts, which sit at Melbourne and suburbs, and at approximately 170 other locations throughout Victoria, are presided over by

stipendiary magistrates and justices of the peace, the administrative work being done by a clerk of courts. Stipendiary magistrates are public servants, appointed under the Public Service Act, but independent in the exercise of their judicial functions. They retire at the age of 65. Justices of the peace are citizens of standing in the community—both men and women—who have been granted a Commission of the Peace, and who serve in an honorary capacity, being retired from judicial functions at the age of 72. As well as having practical experience in Magistrates' Courts, a clerk of courts must pass an examination conducted by the Department. Stipendiary magistrates are, ordinarily, clerks of court of ten years standing, who have attained the age of 35 years and have passed an additional examination, and they attain the Bench as vacancies occur.

Magistrates' Courts deal summarily with the less serious criminal cases; hold preliminary inquiries in indictable criminal offences; and have a civil jurisdiction where the amount involved does not exceed \$200 in ordinary debt cases, \$600 in cases of contract and, subject to certain exemptions, in cases of tort, and \$1,000 in any action in tort arising out of any accident in which a vehicle is involved. (A tort is a wrong or injury committed by one person against another, or an infringement by one person of another person's right.) Children's Courts deal with juveniles under seventeen years of age, and Coroners' Courts conduct inquiries where the cause of death appears to be violent or unusual.

When an accused person is charged with an indictable criminal offence, a Magistrate's Court holds a preliminary inquiry to decide, not his guilt or innocence, but whether there is sufficient evidence to justify him being tried at all. If the evidence warrants it, the magistrates transmit the matter to the appropriate court—Supreme Court or County Court. There the accused stands trial before a judge and jury, the prosecution case being conducted by a prosecutor for the Queen. The judge directs the jury on the law, and sentences the prisoner if he is convicted. The jury are the sole judges, on the facts, of the guilt or otherwise of the accused, who is presumed to be innocent until (and unless) they find him guilty. The onus is upon the prosecution to prove such guilt to the satisfaction of the jury, and to prove it beyond reasonable doubt.

VICTORIA—MAGISTRATES' COURTS: CASES OF CIVIL NATURE

Type of case	1969	1970	1971	1972	1973
Civil cases—					
Number heard	200,801	211,893	213,640	213,167	184,761
Other cases—					
Garnishee	19,680	17,264	15,382	11,785	10,102
Fraud orders	11,270	9,737	9,480	10,479	10,195
Maintenance orders	7,264	8,171	10,014	10,141	11,390
Licences and certificates	26,564	27,830	27,453	28,557	28,773
Show cause summonses	37,440	36,149	38,847	34,123	26,549
Landlord and tenant	4,512	4,017	4,878	4,671	4,295
Miscellaneous	59,711	53,651	52,739	46,564	37,725

NOTE. See footnote to table on page 867 concerning fluctuations in court business.

Particulars of criminal cases and certain other misdemeanours heard in Magistrates' Courts are shown on page 874.

Consolidation of the Statutes, 1961

Children's Court

The Children's Court, which began in Victoria in 1906, is held wherever a Magistrate's Court sits in the Melbourne metropolitan area and in various provincial towns and cities. Beyond the metropolitan area the 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 Courts.

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

Jurisdiction

The Court's jurisdiction is normally restricted to children under seventeen years of age. 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 Social Welfare Act. The Court has no jurisdiction in civil matters, adoption, or civil maintenance.

Offences

In dealing with offences the Court follows the practice and procedure of Magistrates' Courts. However, it 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 fifteen years of age) 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.

Applications

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

Order of the Court

The primary aim of the Children's Court is reformation and rehabilitation of the offender. Punishment is considered for persistent offenders and where attempts at reformation have failed. Indeed, the Court is bound by the *Children's Court Act 1973* to give primary consideration to reformation. "The Court shall firstly have regard to the welfare of the child."

The most important 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 with reformation and rehabilitation as the goal.

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 Social Welfare Department and usually handle those cases requiring especial expertise. Their ranks are augmented by a large number of Honorary Probation Officers throughout the State. 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 to a maximum of one hundred dollars without necessarily recording a conviction against the child.

As a last resort children under fifteen years may be admitted to the care of the Social Welfare Department and those fifteen 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 *Social Welfare 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.

**VICTORIA—CHILDREN'S COURTS: CASES SUMMARILY DISPOSED OF:
NUMBER OF CHARGES AND NATURE OF OFFENCE**

Nature of offence	1971			1972		
	Males	Females	Total	Males	Females	Total
Against the person	666	34	700	899	32	931
Against property	11,212	681	11,893	12,527	755	13,282
Fraud, forgery, and false pretences	121	49	170	155	107	262
Against good order	826	30	856	991	40	1,031
Driving offences	930	8	938	1,061	8	1,069
Miscellaneous offences (a)	245	40	285	248	30	278
Total	14,000	842	14,842	15,881	972	16,853

(a) Breaches of Acts of Parliament and by-laws of statutory bodies, escaping from legal custody, breach of bond or probation, etc.

**VICTORIA—CHILDREN'S COURTS: CASES SUMMARILY DISPOSED OF:
NUMBER OF CHARGES AND RESULT OF HEARING**

Result of hearing	1971			1972		
	Males	Females	Total	Males	Females	Total
Fined	933	42	975	1,001	17	1,018
Placed on probation	5,303	341	5,644	6,507	382	6,889
Admitted to Social Welfare Department	1,663	106	1,769	1,977	114	2,091
Sentenced to youth training centre	1,715	31	1,746	1,689	9	1,698
Adjourned without probation	3,277	238	3,515	3,153	301	3,454
Other	303	36	339	480	103	583
Total convictions	13,194	794	13,988	14,807	926	15,733
Dismissed, withdrawn, or struck out	806	48	854	1,074	46	1,120
Total	14,000	842	14,842	15,881	972	16,853

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. Court proceedings are closed to the press and general public.

VICTORIA—CHILDREN'S COURTS: CASES SUMMARILY DISPOSED OF:
NUMBER OF CHARGES: NATURE OF OFFENCE AND RESULT OF
HEARING, 1972

Nature of offence	Result of hearing					
	Dis- missed, with- drawn, etc.	Otherwise dealt with				
Fined		Placed on probation	Social Welfare Depart- ment (a)	Ad- jour- ned without probation	Other	
Against the person—						
Assault and grievous bodily harm	179	80	107	72	91	25
Sex offences	40	8	106	77	111	35
Total	219	88	213	149	202	60
Against property—						
Robbery	6	2	22	51	4	2
Breaking and entering	145	48	2,471	1,565	800	82
Larceny (excluding motor vehicles)	206	109	1,998	726	1,102	147
Motor vehicles (larceny and illegal use)	173	135	1,135	754	455	93
Wilful damage	53	85	154	56	104	11
Other offences against property	47	18	222	128	153	20
Total	630	397	6,002	3,280	2,618	355
Fraud, forgery, and false pretences	27	19	70	29	39	78
Against good order—						
Indecent behaviour, etc.	4	2	29	7	52	5
Other offensive behaviour	24	49	11	4	35	11
Obscene and insulting language	12	69	15	2	28	2
Firearms	10	50	34	10	81	7
Other offences against good order	74	47	143	58	130	26
Total	124	217	232	81	326	51
Driving offences	94	245	329	147	221	33
Miscellaneous offences (b)	26	52	43	103	48	6
GRAND TOTAL	1,120	1,018	6,889	3,789	3,454	583

(a) Includes "admitted to care" and "placed in custody" of the Social Welfare Department.

(b) Breaches of Acts of Parliament and by-laws of statutory bodies, escaping from legal custody, breach of bond or probation, etc.

Warning 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 juvenile 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 a guardian, 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.

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 continues to take an interest in the child until his future is assured, and in most cases co-operation is received from both the offender and his parents or guardian.

VICTORIA—POLICE WARNINGS

Offence group (a)	1969		1970		1971		1972	
	Males	Females	Males	Females	Males	Females	Males	Females
Assault (b)	14	..	20	1	10	6	35	5
Robbery with violence	..	..	1	..	1	..	..	..
Sex	41	1	45	3	35	2	32	2
Breaking and larceny (c)	1,113	359	1,271	536	1,290	656	1,416	771
Other offences	284	20	285	20	362	33	481	27
Total	1,452	380	1,622	560	1,698	697	1,964	805

(a) Based on Major Crime Index as prepared by the Victoria Police.

(b) Includes grievous bodily harm.

(c) Includes larceny and/or illegal use of a motor vehicle.

VICTORIA—POLICE WARNINGS: AGE OF OFFENDER, 1972

Offence group (a) and sex	Age last birthday (years)					Total	
	10 and under	11, 12	13, 14	15, 16	17 and over		
Assault (b)	M	..	7	8	16	4	35
	F	..	..	1	4	..	5
Robbery with violence	M	..	..	..	..	..	..
	F	..	..	..	..	..	..
Sex	M	2	2	11	14	3	32
	F	..	1	..	1	..	2
Breaking and larceny (c)	M	216	279	461	387	73	1,416
	F	22	100	310	285	54	771
Other offences	M	43	70	146	162	60	481
	F	..	8	8	9	2	27
Total		283	467	945	878	196	2,769

(a) Based on Major Crime Index as prepared by the Victoria Police.

(b) Includes grievous bodily harm.

(c) Includes larceny and/or illegal use of a motor vehicle.

CRIME STATISTICS

Magistrates' Courts

In the following tables details are given of the number of cases dealt with in Magistrates' Courts (known as Courts of Petty Sessions prior to 1970), excluding Children's Courts (details of which have been shown under that heading) and cases of a civil nature which are shown on page 869.

If one wishes to compare the figures in these tables with those relating to other States or countries, it is necessary that consideration be given to several points. The first is that the criminal law in the places compared be substantially the same; the second, that it be administered with equal strictness; and the third, that proper allowances be made for differences in the age and sex composition of the population.

Comparison with Victorian figures for earlier years may be affected by changes in the population structure in regard to sex and age, or by changes in the law. An amendment to the Justices Act, operative since February 1963, enables Magistrates' Courts to deal summarily with certain

offences previously dealt with by the higher courts. Also, improved methods of statistical collection commenced in 1963.

**VICTORIA—MAGISTRATES' COURTS : ARREST CASES SUMMARILY
DISPOSED OF : NUMBER OF CHARGES AND NATURE OF OFFENCE**

Nature of offence	1971				1972			
	Convicted		Dismissed, withdrawn, or struck out		Convicted		Dismissed, withdrawn, or struck out	
	Males	Females	Males	Females	Males	Females	Males	Females
Against the person	2,700	90	1,608	48	2,890	93	1,742	62
Against property	11,131	1,765	1,337	227	11,805	2,064	1,460	205
Fraud, forgery, and false pretences	1,729	248	98	30	1,746	338	224	35
Against good order (a)	6,199	664	1,566	112	6,484	654	1,599	96
Driving offences	6,425	67	3,224	37	10,851	138	3,215	36
Miscellaneous (b)	1,868	130	230	18	2,235	239	354	34
Total	30,052	2,964	8,063	472	36,011	3,526	8,594	468

(a) This table excludes arrests for drunkenness. In 1971, 26,081 persons were charged with drunkenness; the corresponding figure for 1972 was 29,255. In most cases the result of hearing was a fine, with the alternative of imprisonment for default.

(b) Includes escaping from legal custody, offences concerning drugs, bribery, conspiracy, breach of bond, or probation, etc.

**VICTORIA—MAGISTRATES' COURTS : ARREST CASES SUMMARILY
CONVICTED : NUMBER OF CHARGES AND RESULT OF HEARING**

Result of hearing	1971		1972	
	Males	Females	Males	Females
Fined	14,390	1,537	19,115	1,749
Imprisoned for—				
Under 1 month	1,611	144	1,786	129
1 month and under 6 months	4,839	127	4,658	194
6 months and under 12 months	1,055	8	944	6
1 year and over	380	27	302	3
Released on probation	2,199	329	2,529	291
Adjudged for a period without probation	1,312	182	1,389	304
Released on bond or recognisance	3,124	580	3,824	829
Other	1,142	30	1,464	21
Total	30,052	2,964	36,011	3,526

**VICTORIA—MAGISTRATES' COURTS :
SUMMONS CASES SUMMARILY DISPOSED OF :
NUMBER OF CHARGES AND NATURE OF OFFENCE**

Nature of offence	1972		1973	
	Convicted	Dismissed, with- drawn, struck out	Convicted	Dismissed, with- drawn, struck out
Against the person	1,049	1,618	1,271	1,586
Against property	3,443	1,803	3,523	1,474
Against good order	1,744	632	1,854	555
Driving offences	180,836	17,601	203,996	20,056
Miscellaneous (a)	49,957	10,399	46,146	9,760
Total	237,029	32,053	256,790	33,431

(a) Miscellaneous offences are generally breaches of State and Australian Acts of Parliament.

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.

His 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 Social Welfare Act, and 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 the coroner acts alone in holding an inquest, but in certain cases a jury is empanelled. This is done (a) when the coroner considers it desirable; (b) when in any specified case a law officer so directs; (c) when it is expressly provided in any Act that an inquest shall be taken with jurors; (d) when a relative of the deceased person so requests; (e) any person knowing the circumstances leading up to the death of the deceased person; or (f) any member of the police force so requests. 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.

The following table shows the number of inquests held between 1970 and 1973 within the jurisdiction of the Melbourne Coroner's Court:

VICTORIA—MELBOURNE CORONER'S COURT: INQUESTS HELD

Year	Number of inquests held
1970	1,551
1971	1,578
1972	1,517
1973	1,560

NOTE. The following variations apply to previously published data: details for the whole of Victoria are not available from 1970, and details on the new basis are not available for periods prior to 1970.

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.

The table below shows the charges for the whole of Victoria on which persons were committed for trial by coroners during the years 1969 to 1973:

VICTORIA—COMMITTALS BY CORONERS

Year	Murder			Manslaughter			Culpable driving		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
1969	17	2	19	30	1	31	(a)	(a)	(a)
1970	28	5	33	17	..	17			
1971	27	4	31	9	..	9	7	..	7
1972	26	2	28	17	..	17	15	1	16
1973	39	6	45	7	2	9	42	..	42

(a) Not available separately prior to 1971.

Higher courts

The tables which follow relate to distinct persons who have been convicted in the Supreme and County Courts in Victoria in the years shown. In cases where a person was charged with more than one offence, the principal offence only has been counted.

VICTORIA—HIGHER COURTS: NUMBER OF PERSONS CONVICTED OF SPECIFIC OFFENCES

Offence (a)	1971			1972		
	Males	Females	Persons	Males	Females	Persons
Against the person—						
Murder	10	1	11	10	..	10
Attempted murder	3	..	3	1	..	1
Manslaughter	13	3	16	15	..	15
Manslaughter with motor vehicle	..	..	..	1	..	1
Culpable driving causing death	16	..	16	14	1	15
Assault with grievous bodily harm	66	1	67	71	5	76
Assault	19	..	19	33	1	34
Carnal knowledge (under 16 years)	157	..	157	170	..	170
Carnal knowledge (16 and under 18 years)	..	..	..	1	..	1
Incest	22	..	22	23	..	23
Rape	31	..	31	31	..	31
Indecent assault on female	39	..	39	43	..	43
Indecent assault on male	34	..	34	24	1	25
Unnatural offences	19	..	19	23	..	23
Bigamy	1	..	1	3	..	3
Other offences against the person	19	3	22	12	4	16
Total	449	8	457	475	12	487
Against property—						
Robbery	115	2	117	149	7	156
Breaking and entering—						
Houses	307	12	319	262	14	276
Shops	38	..	38	77	1	78
Other	47	..	47	52	..	52
Larceny (excluding motor vehicles and cattle and sheep)	137	17	154	110	11	121
Illegal use and larceny of motor vehicles	123	1	124	114	4	118
Cattle and sheep stealing	29	..	29	19	..	19
Other offences against property	73	4	77	82	6	88
Total	869	36	905	865	43	908
Fraud, forgery, and false pretences	144	20	164	142	34	176

VICTORIA—HIGHER COURTS : NUMBER OF PERSONS CONVICTED OF SPECIFIC OFFENCES—
continued

Offence (a)	1971			1972		
	Males	Females	Persons	Males	Females	Persons
Other offences—						
Driving under the influence (b)	..	..	..	..	..	..
Dangerous, etc., driving (b)	3	..	3	233	13	246
Miscellaneous offences (c)	262	14	276	233	13	246
Total	265	14	279	233	13	246
GRAND TOTAL	1,727	78	1,805	1,715	102	1,817

- (a) With the exception of murder, for which separate figures of attempted murder are shown, all offences include attempts.
 (b) In March 1968 an amendment to the Motor Car Act classified some of these offences as summary offences which may be heard in Magistrates' Courts.
 (c) Includes breach of bond, probation, etc.

VICTORIA—HIGHER COURTS : PERSONS CONVICTED OF SPECIFIC
OFFENCES : RESULT OF HEARING, 1972

Offence (a)	Fined	Im- prison- ed twelve months and under	Im- prison- ed over twelve months	Death sen- tence (b)	Sen- tence sus- pended on enter- ing a bond	Placed on pro- bation	Other	Total
Against the person—								
Murder	..	..	1	8	..	..	1	10
Attempted murder	..	..	1	..	..	..	..	1
Manslaughter	..	1	13	..	1	..	..	15
Manslaughter with motor vehicle	..	..	1	..	..	..	..	1
Culpable driving causing death	..	4	5	..	3	1	2	15
Assault with grievous bodily harm	4	13	24	..	27	6	2	76
Assault	5	8	3	..	12	5	1	34
Carnal knowledge (under 16 years)	6	7	4	..	96	56	1	170
Carnal knowledge (16 and under 18 years)	..	..	..	..	1	..	..	1
Incest	..	1	15	..	2	5	..	23
Rape	..	1	16	..	6	5	3	31
Indecent assault on female	3	10	8	..	14	7	1	43
Indecent assault on male	..	5	3	..	7	9	1	25
Unnatural offences	..	4	6	..	9	4	..	23
Bigamy	..	1	..	..	2	..	..	3
Other offences against the person	..	2	5	..	6	3	..	16
Total	18	57	105	8	186	101	12	487
Against property—								
Robbery	1	28	71	..	19	24	13	156
Breaking and entering—								
Houses	1	74	57	..	66	59	19	276
Shops	..	23	12	..	22	13	8	78
Other	..	16	15	..	7	10	4	52
Larceny (excluding motor vehicles and cattle and sheep)	7	31	13	..	53	16	1	121
Illegal use and larceny of motor vehicles	1	37	16	..	26	27	11	118
Cattle and sheep stealing	1	4	..	..	11	3	..	19
Other offences against property	4	24	10	..	35	11	4	88
Total	15	237	194	..	239	163	60	908
Fraud, forgery, and false pretences	8	42	11	..	82	30	3	176
Other offences—								
Dangerous, etc., driving	..	..	..	..	..	..	..	..
Miscellaneous offences (c)	28	71	40	..	55	42	10	246
Total	28	71	40	..	55	42	10	246
GRAND TOTAL	69	407	350	8	562	336	85	1,817

- (a) With the exception of murder, for which separate figures of attempted murder are shown, all offences include attempts.
 (b) The death sentence has not been carried out in Victoria since 1967.
 (c) Includes breach of bond, probation, etc.

**VICTORIA—HIGHER COURTS : AGES OF PERSONS
CONVICTED OF SPECIFIC OFFENCES, 1972**

Offence (a)	Persons convicted—Age group (years)							Total
	17 and under	18-19	20-24	25-29	30-34	35-39	40 and over	
Against the person—								
Murder	1	1	2	1	..	2	3	10
Attempted murder	..	..	1	..	..	..	..	1
Manslaughter	..	3	2	4	1	1	4	15
Manslaughter with motor vehicle	..	1	..	..	..	..	..	1
Culpable driving causing death	..	1	8	2	1	..	3	15
Assault with grievous bodily harm	1	11	17	9	21	4	13	76
Assault	..	5	13	6	3	1	6	34
Carnal knowledge (under 16 years)	2	64	83	12	2	2	5	170
Carnal knowledge (16 and under 18 years)	..	..	..	1	..	..	..	1
Incest	2	2	2	2	3	4	9	23
Rape	..	11	10	4	3	3	3	31
Indecent assault on female	1	2	9	7	6	3	15	43
Indecent assault on male	1	2	5	3	5	..	9	25
Unnatural offences	..	2	6	6	5	2	2	23
Bigamy	..	..	..	..	..	1	2	3
Other offences against the person	..	1	4	8	2	1	..	16
Total	8	106	162	65	51	24	71	487
Against property—								
Robbery	6	33	63	29	10	7	8	156
Breaking and entering—								
Houses	14	79	94	31	22	9	27	276
Shops	2	11	37	18	3	4	3	78
Other	1	11	18	13	5	..	4	52
Larceny (excluding motor vehicles and cattle and sheep)	4	9	28	27	17	13	23	121
Illegal use and larceny of motor vehicles	1	29	52	22	6	4	4	118
Cattle and sheep stealing	..	1	6	5	2	4	1	19
Other offences against property	..	13	29	16	8	11	11	88
Total	28	186	327	161	73	52	81	908
Fraud, forgery, and false pretences	3	7	41	39	24	13	49	176
Other offences—								
Dangerous, etc., driving	..	..	..	..	..	..	..	..
Miscellaneous offences (b)	3	22	86	51	28	18	38	246
Total	3	22	86	51	28	18	38	246
GRAND TOTAL	42	321	616	316	176	107	239	1,817

(a) With the exception of murder, for which separate figures of attempted murder are shown, all offences include attempts.

(b) Includes breach of bond, probation, etc.

**VICTORIA—HIGHER COURTS : NUMBER OF PERSONS CONVICTED :
RESULT OF HEARING**

Result of hearing	1971			1972		
	Males	Females	Persons	Males	Females	Persons
Fined	42	1	43	65	4	69
Imprisoned—						
Under 3 months	57	7	64	37	2	39
3 months and under 6	86	3	89	71	2	73
6 months and under 12	163	2	165	159	..	159
12 months	146	..	146	134	2	136
Over 12 months and under						
2 years	100	1	101	94	1	95
2 years and over	254	3	257	249	6	255
Death sentence (a)	5	..	5	8	..	8
Placed on probation	252	36	288	310	26	336
Released on recognisance or bond	477	24	501	504	58	562
Other	145	1	146	84	1	85
Total	1,727	78	1,805	1,715	102	1,817

(a) The death sentence has not been carried out in Victoria since 1967.

**VICTORIA—HIGHER COURTS :
AGES OF PERSONS CONVICTED**

Age group (years)	1971			1972		
	Males	Females	Persons	Males	Females	Persons
Under 20	469	21	490	343	20	363
20-24	582	24	606	589	27	616
25-29	232	8	240	297	19	316
30-34	144	9	153	165	11	176
35-39	104	7	111	99	8	107
40-44	85	2	87	86	7	93
45-49	58	2	60	61	6	67
50-54	24	3	27	45	3	48
55-59	19	2	21	16	1	17
60 and over	10	..	10	14	..	14
Total	1,727	78	1,805	1,715	102	1,817

VICTORIA POLICE

The Victoria Police Force is charged with the basic responsibilities of maintaining the Queen's Peace, protecting the lives and property of all citizens, and generally enforcing the laws of the State. Without police to act as the instrument for enforcing the rule of law, to ensure that citizens may live safely in their homes and go freely about their lawful business, civilised society would disintegrate and be replaced by anarchy.

The discharge of these basic responsibilities is not simple, for included in them are certain functions, which come under the category of befriending anyone in need, and helping during emergencies, which divert a considerable amount of police and police resources from their primary responsibilities. The police are now, however, being progressively freed from certain of these duties.

Functions

The present main functions of the police may be summarised as :

- (a) to maintain law and order and to protect persons and property ;
- (b) to prevent crime ;
- (c) to detect offenders who have committed crimes. In this area, when interrogating suspected persons, police have a part to play in the early stages of the judicial process, and act under judicial restraint ;
- (d) to decide whether or not, on the evidence available, to prosecute persons suspected of criminal offences ;
- (e) to conduct prosecutions for offences punishable summarily ; and to conduct proceedings in indictable matters up to the committal for trial ;
- (f) to control road traffic, prevent congestion and accidents, and investigate accidents which do occur ;
- (g) to carry out inquiries for other areas of government ;
- (h) to attend to the service and execution of legal process ; and
- (i) to befriend anyone who needs their help, and at any time to cope with minor or major emergencies.

The requirements of the last point extend from such mundane matters as directing a stranger to his destination to problems of such gravity as the organising and participating in search and rescue operations during times

of fire, flood, and other major disasters. In all those disaster type situations the police are usually among the first on the scene and are charged with the responsibility of guaranteeing the most favourable conditions for remedial action by experts, and to take such action as is immediately necessary pending the arrival of experts.

The complexity of police responsibilities is increased by the fact that, for all practical purposes, the public demand for police service is unlimited. Every new housing development creates an increased demand for an extension of police service, and for an increase in the visible police presence on the public roads and highways. With every new technique, new needs for manpower and resources are created.

Because of the virtually unlimited capacity of the individual and the community to absorb police service, the Force is confronted with the problem of rationing the manpower and other police resources available. Unless those resources are distributed on a basis of priorities according to the real needs of the various areas of the State, an inequitable allocation will occur.

Recent re-organisation

To assist the Force in achieving this equitable distribution of manpower and other resources, a considerable restructuring of organisation and administrative arrangements has been undertaken since 1971. This revamping, initially at the top administrative level, has adjusted the responsibilities of the Assistant Commissioners so that the demands upon each are more evenly distributed, and similar principles have been applied at other levels of the Force—especially in the metropolitan area—so that the demands upon officers in charge of police districts and divisions are no longer too severe.

These changes, by strengthening the command and control channels within the various districts, have improved the quality of service provided to the public. This is especially so, since improved control and supervision results in improved leadership and a far more effective utilisation of the resources available—both over the twenty-four hour period and throughout the geographic area for which the various police groupings have a responsibility.

Although considerable difficulty is still being experienced in expanding the manpower resources of the Force, it has still been possible to extend the police services being provided to the public, especially on the outer fringes of the metropolis of Melbourne—those areas which, during the past decade, have experienced rapid residential development and population growth.

While it has not been possible to provide each new or expanding area with all the police services that the Force and those communities would wish, it has been possible, by consciously and deliberately adopting the concept of team policing, to ensure that existing resources are utilised to full capacity. The team policing concept, which is based on the common sense notion that in emergencies operational units will ignore divisional and district boundaries, enables the Force radio control system to concentrate and/or deploy all available police mobile units.

To support that concept, each metropolitan police district has its own group of personnel formed into a crime car squad of twenty-six members.

These groups provide a very effective anti-crime, etc., patrol capability ; and, as the geographic areas of the metropolitan police districts are reduced, so the intensity of patrolling increases. When manpower resources increase sufficiently, this type of activity will be expanded into country areas.

Planning is also advanced to provide a further support for the crime car squads by the establishment of independent patrol groups. These groups are planned for both the uniformed operations and the traffic departments of the Force. They will provide the necessary flexibility which is essential if saturation policing techniques are to be applied to particular trouble spots without having to diminish other areas of police resources.

Apart from the continuing problem of crime in the community, probably the greatest single concern facing the Force is to be found in the vehicular accident rate and the consequent road toll. With an annual growth of about 5 per cent in the number of vehicle registrations and driving licences issued, the exposure of persons using streets and highways to the risk of accidental death or injury grows quite steadily year by year. Under these circumstances, despite the irresponsibility displayed by some road users, it is significant to note that the impact of such safety legislation as the requirement to fit and wear seat belts, the influence of media road safety campaigns, and the pressure of continuing police efforts to improve driver behaviour has succeeded in containing the road toll within reasonable margins. To assist in containing the road toll and in improving the standards of driver behaviour encountered on the streets and highways of the State, the metropolitan group of the Mobile Traffic Section has been decentralised into four divisions, each one responsible for a separate geographic area. In addition, as manpower becomes available, special traffic groups are being created with the responsibility for patrolling the major highways of the State. Already, such specialist groups have been established on the Hume Highway, the Western Highway, and the Princes Highway East. In due course this form of specialist attention will be provided for other major highways which serve the hinterland of Victoria, areas in which a disproportionate share of the traffic fatalities occur.

In the final analysis, the community can only benefit from a level of police service which is within the Force's available resources, and the limits of its available manpower. The nature of service provided by the Force is determined by the allocation of resources to such areas as the community decides it can afford and is prepared to make.

VICTORIA—POLICE FORCE AT 30 JUNE

Particulars	1969	1970	1971	1972	1973
Authorised strength	4,781	4,823	5,073	5,372	5,572
Actual strength (a)	4,743	4,739	4,945	5,274	5,510
C.I.B., etc. (b)	666	653	686	733	798
Police-women	70	71	109	144	163
Cadets	176	184	204	250	217
Reservists	61	59	51	53	48
Number of inhabitants per active police officer (a)	714	718	707	672	643

(a) Includes Criminal Investigation Branch and police-women, but excludes cadets and police reservists.

(b) Criminal Investigation Branch, plainclothes police, and scientific section.

Further references, 1961-1974