

JUSTICE AND THE ADMINISTRATION OF LAW

INTRODUCTION

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

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

JUDICIAL SYSTEM

Victorian Judiciary

VICTORIA—SUPREME COURT AT 1 JANUARY 1977

Chief Justice

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

Puisne Judges

The Hon. Sir Oliver Gillard
 The Hon. Sir John Starke
 The Hon. Sir Esler Barber
 The Hon. Mr Justice Murray Vincent McInerney
 The Hon. Mr Justice George Hermann Lush
 The Hon. Mr Justice Clifford Inch Menhennitt
 The Hon. Mr Justice Hibbert Richard Newton
 The Hon. Mr Justice Francis Robert Nelson
 The Hon. Mr Justice Kevin Victor Anderson
 The Hon. Mr Justice William Charles Crockett
 The Hon. Mr Justice William Kaye
 The Hon. Mr Justice Benjamin James Dunn, O.B.E.
 The Hon. Mr Justice Peter Murphy
 The Hon. Mr Justice William Oliver Harris
 The Hon. Mr Justice Basil Lathrop Murray, C.B.E.
 The Hon. Mr Justice Richard Kelsham Fullagar
 The Hon. Mr Justice Kenneth Joseph Jenkinson
 The Hon. Mr Justice Richard Elgin McGarvie

VICTORIA—JUDGES OF THE COUNTY COURT AT 1 JANUARY 1977*Chief Judge*

Desmond Patrick Whelan

Judges

Trevor George Rapke	Joseph Raymond O'Shea
Norman Alfred Vickery, M.B.E., M.C., E.D.	James Galvin Gorman
Arthur Charles Adams	Robert John Davern Wright
Dermot William Corson	Geoffrey Michael Byrne
James Herbert Forrest	Harold George Ogden
Clive William Harris	Nubert Solomon Stabey
Eric Edgar Hewitt	Bruce Finlay McNab
Gordon Just	Gordon Henry Spence
Roland John Leckie	John William Mornane
Ivan Frederick Charles Franich	Stanley George Hogg
Thomas Bernard Shillito	Martin Charles Ravech
John Philip Somerville	John Frederick Bernard Howse
William Joseph Martin	Leo Sydney Lazarus
Ian Gray	Victor Herbert Belson
Alec James Southwell	

Courts*High Court of Australia*

The High Court of Australia was created by the Commonwealth of Australia Constitution which provided for the vesting of the judicial power of the Commonwealth "in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such 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 Commonwealth Parliament prescribes.

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

The number of Justices was increased from three to five in 1906 and was again increased in 1912 to seven. In 1933 the number was reduced to six and in 1946 the number of Justices was restored to seven. The Justices are all appointed for life † as is required by the Constitution as it has been interpreted by the High 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 High Court has the like jurisdiction to hear appeals from the Supreme Court of a State. The High Court thus became part of the hierarchy in the judicial system of each State. The Constitution provided also for the High Court to exercise original jurisdiction in matters arising under any treaty; affecting consuls or other representatives of other countries; in which the Commonwealth or a person being sued on behalf of the Commonwealth is a party; and between residents of different States or between a State and a resident of another State, or in which a writ of mandamus* or prohibition or injunction is sought against an officer of the Commonwealth.

The jurisdiction of the High Court has been exercised over the years to a considerable degree, in particular by the use of prerogative writs of prohibition and mandamus in relation to Commonwealth officers, and to control the jurisdiction of tribunals constituted under Commonwealth legislation, e.g., Commonwealth Court of Conciliation and Arbitration (before 1956), Commonwealth Conciliation and Arbitration Commission, and other bodies.

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

† A referendum was approved in May 1977 allowing legislation for a retirement age for judges.

In addition, the Constitution provided that the Commonwealth Parliament may make laws conferring jurisdiction on the High Court in any matter arising under the Constitution or involving its interpretation, arising under any laws made by the Commonwealth Parliament, and in admiralty or in maritime matters. Pursuant to the last-named provision the Commonwealth Parliament has in section 38 of the *Judiciary Act* 1903-1969 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 Commonwealth 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 Commonwealth 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 Commonwealth of Australia Constitution, and second, hearing and deciding appeals from judgments of the Courts of the States and 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 subsequently been granted.

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

The right of appeal has been further restricted by the *Privy Council (Limitations of Appeals) Act* 1968-1973 and the *Privy Council (Appeals from the High Court) Act* 1975. The commencement date of the latter Act has not yet been proclaimed.

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

By minute dated 2 October 1903, the Governor-General ordered and declared that until the seat of government should be established or until otherwise ordered the principal seat of the High Court should be at Melbourne. In 1926 section 10 of the Judiciary Act was amended to provide that on and after a date to be fixed by proclamation the principal seat of the High Court should be at the seat of government and that until the date so fixed the principal seat of the High Court should be at such place as the Governor-General from time to time appointed. 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, is the supreme court of the State, having jurisdiction over all matters, civil and criminal, which have not been excluded by statute. It is established by the Constitution Act. It is the counterpart of the English Supreme Court of Judicature which embodies the Court of Appeal and the High Court. The latter is divided into three divisions—Queen's Bench, Chancery, and Family. The Constitution Act provides for the Supreme Court to consist of not more than twenty-one judges of whom one is the Chief Justice. All judges are appointed from the ranks of practising barristers of not less than eight years standing, and retire at the age of 72 years. The Supreme Court consisted of a Chief Justice and 20 puisne judges at 31 July 1976. (Judges of the Supreme Court other than the Chief Justice are called puisne judges.)

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

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

The officers of the Supreme Court are the Masters (four in 1976), the Taxing Master, the Prothonotary, the Sheriff, and the Registrar of Probates. The Masters deal with various matters entrusted to them by Rules of Court made by the judges, and are responsible for the investment of moneys ordered to be paid into court. 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 Supreme Court. Writs are issued from his office, and he has the custody of documents filed therein. The Sheriff who, like the Prothonotary is a public servant (the Masters and the Taxing Master are not under the Public Service Act), is responsible for the execution of writs, the summoning of juries, and the enforcement of 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 Supreme Court, it is desirable that the controversial questions between the two parties should be clearly defined. This clarification is obtained by each side in turn delivering documents, stating its own case, and answering that of its opponent. Such statements and answers are called "pleadings", and this method of clarifying the issues has been practised in England from the earliest times, and is as ancient as any part of English procedural law.

Ultimately the action comes to trial before a judge alone, or a judge and jury. When a judge sits alone he decides questions of both law and fact. If there is a jury, the judge directs them on the law; the jury decides the facts. The judgment of the Supreme Court usually provides for payment by the loser of the opponent's legal costs. Normally these are assessed by the Taxing Master. The unsuccessful party in the action has 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.

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

In most cases an appeal lies as of right to the High Court of Australia from decisions of the Supreme Court, but in others it can only be taken with the leave or special leave of the High Court. In some cases an appeal may be taken to the Privy Council from a decision of the Supreme Court but the leave of the Court must first be obtained. (With respect to appeals to the Privy Council from the High Court, see page 861.)

County Court

The County Court has an extensive jurisdiction in civil and criminal matters and appeals from Magistrates' Courts and adoptions. The County Court has civil jurisdiction in personal injury actions where the amount claimed does not exceed \$12,000, and in all other personal actions where the amount claimed does not exceed \$6,000.

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

In 1976 the County Court comprised a Chief Judge (a position created in April 1975 in recognition of the increasing importance of the Court) and 27 judges. An appointee to the County Court bench must have practised as a barrister or solicitor for seven years before appointment and retires at the age of 72 years.

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

An indication of the distribution of the work performed by County Court judges in a typical month is as follows: criminal cases, 9 judges; civil juries, 2 judges; civil causes, 4 judges; appeals, 2 judges; chambers and adoptions, 1 judge; circuit, 4 judges; Workers Compensation Board, 4 judges; and other tribunals, 2 judges.

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

Courts. The Clerk of Courts at each circuit town is also Registrar of the County Court.

Supreme and County Court statistics

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

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

VICTORIA—SUPREME COURT : CIVIL BUSINESS

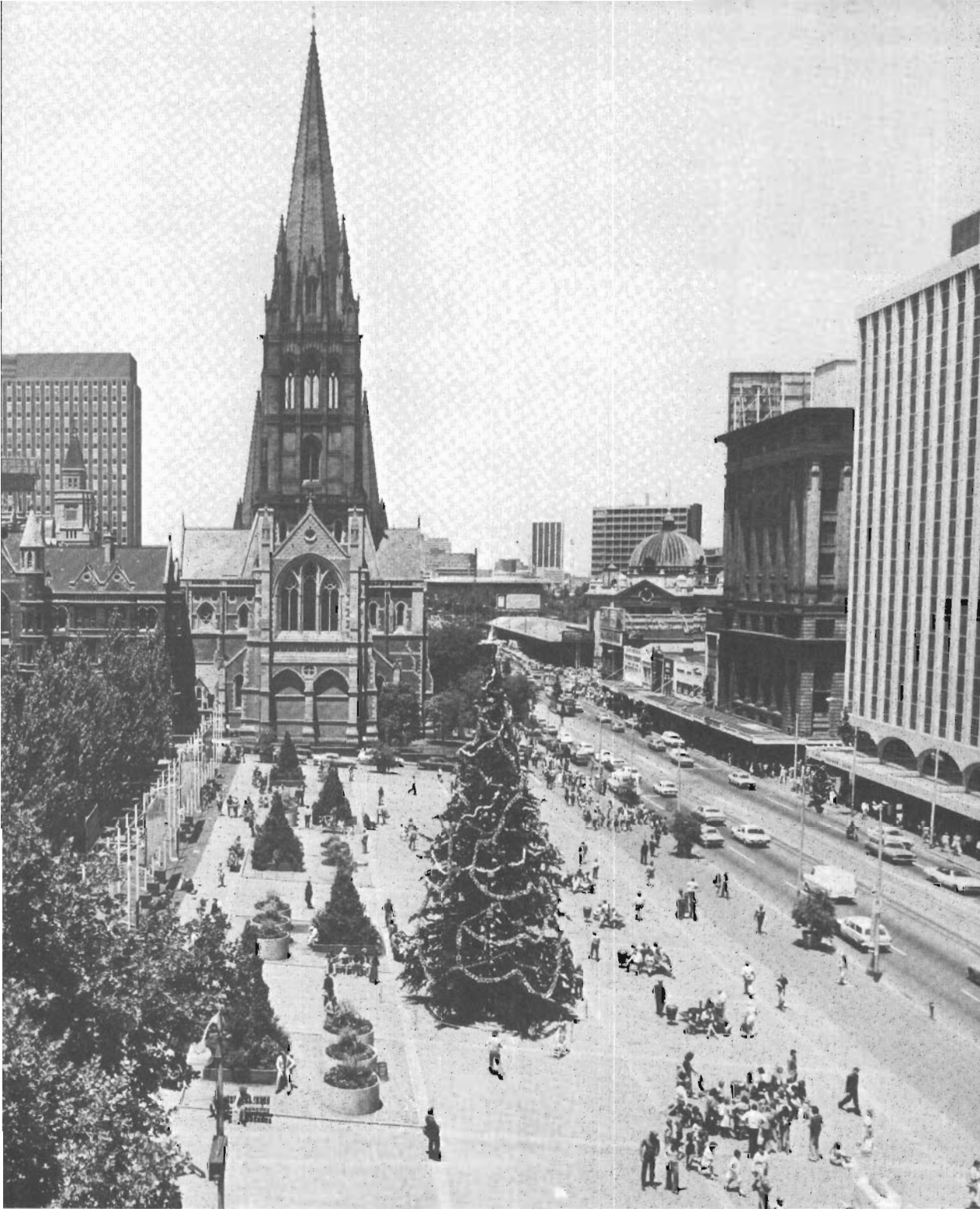
Particulars	1971	1972	1973	1974	1975
Causes entered—					
For assessment of damages	19	35	28	22	25
For trial	2,312	2,577	2,215	1,596	1,575
Number of cases listed for trial—					
By juries of six	1,219	1,327	1,596	1,280	937
By a Judge	627	725	1,042	1,066	575
Verdicts returned for—					
Plaintiff	160	151	165	163	111
Defendant	22	28	26	21	19
Amount awarded (\$'000)	1,161	1,118	1,612	1,630	1,683
Writs of summons issued	6,223	5,998	4,735	5,214	6,407
Other original proceedings	193	160	109	152	190
Appellate proceedings (other than criminal appeals) heard and determined—					
By Full Court	53	56	66	47	73
By a Judge	135	80	87	99	140

VICTORIA—SUPREME COURT : WRITS RECEIVED
BY THE SHERIFF

Year	Sovereign's writs against person and property	Subjects' writs against—		Total
		The person	Property	
1971	1	6	1,117	1,124
1972	.	16	1,241	1,257
1973	5	13	981	999
1974	6	21	1,196	1,223
1975	1	8	1,398	1,407

VICTORIA—COUNTY COURT : MELBOURNE BUSINESS

Particulars	1971	1972	1973	1974	1975
Summonses issued	23,854	26,102	26,402	30,517	31,180
Warrants of execution issued	7,502	7,847	7,691	8,771	10,289
Appeals from Magistrates' Courts lodged	3,068	3,543	3,448	3,498	3,653
Adoption applications filed	1,689	1,516	1,324	1,045	837
Civil trials heard	910	735	1,462	2,608	2,646
Criminal trials heard	1,920	2,034	2,076	1,674	1,792



Melbourne's civic square, photographed late in 1975, before the City Council decided to temporarily enlarge the area.

Melbourne City Council



An artist's impression of the Civic Square, from the winning design selected at the Civic Square design competition conducted by the Melbourne City Council.

Melbourne City Council

Melbourne's civic square temporarily enlarged in 1976. The Council has installed fountains, trees, shrubbery, flowers, and lawns so that the square can be fully utilised until the permanent construction is complete.

Melbourne City Council



VICTORIA—SUPREME AND COUNTY COURTS : NUMBER OF PERSONS CONVICTED : RESULT OF HEARING

Result of hearing	1971			1972			1973		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
Fined	42	1	43	65	4	69	220	8	228
Imprisoned—									
Under 3 months	57	7	64	37	2	39	46	2	48
3 months and under 6 months	86	3	89	71	2	73	64	1	65
6 months and under 12 months	163	2	165	159	..	159	125	2	127
12 months	146	..	146	134	2	136	121	..	121
Over 12 months and under 2 years	100	1	101	94	1	95	81	1	82
2 years and over	254	3	257	249	6	255	214	6	220
Death sentence (a)	5	..	5	8	..	8	..	..	..
Placed on probation	252	36	288	310	26	336	303	32	335
Released on recognisance or bond	477	24	501	504	58	562	438	50	488
Other	145	1	146	84	1	85	124	3	127
Total	1,727	78	1,805	1,715	102	1,817	1,736	105	1,841

(a) The death sentence, which has not been carried out in Victoria since 1967, was repealed in April 1975.

VICTORIA—SUPREME AND COUNTY COURTS : AGES OF PERSONS CONVICTED

Age group (years)	1971			1972			1973		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
Under 20	469	21	490	343	20	363	403	17	420
20-24	582	24	606	589	27	616	541	32	573
25-29	232	8	240	297	19	316	280	24	304
30-34	144	9	153	165	11	176	180	12	192
35-39	104	7	111	99	8	107	122	3	125
40-44	85	2	87	86	7	93	83	6	89
45-49	58	2	60	61	6	67	60	5	65
50-54	24	3	27	45	3	48	30	2	32
55-59	19	2	21	16	1	17	18	2	20
60 and over	10	..	10	14	..	14	19	2	21
Total	1,727	78	1,805	1,715	102	1,817	1,736	105	1,841

VICTORIA—SUPREME AND COUNTY COURTS : NUMBER OF PERSONS CONVICTED OF SPECIFIC OFFENCES

Offence (a)	1971			1972			1973		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
Against the person—									
Murder	10	1	11	10	..	10	4	2	6
Attempted murder	3	..	3	1	..	1	3	2	5
Manslaughter	13	3	16	15	..	15	22	3	25
Manslaughter with motor vehicle	..	..	..	1	..	1	..	..	..
Culpable driving causing death	16	..	16	14	1	15	17	..	17
Assault with grievous bodily harm	66	1	67	71	5	76	92	2	94
Assault	19	..	19	33	1	34	37	1	38
Carnal knowledge (under 16 years)	157	..	157	170	..	170	170	..	170
Carnal knowledge (16 and under 18 years)	..	..	..	1	..	1	1	..	1
Incest	22	..	22	23	..	23	10	..	10
Rape	31	..	31	31	..	31	35	..	35
Indecent assault on female	39	..	39	43	..	43	44	..	44
Indecent assault on male	34	..	34	24	1	25	28	..	28
Unnatural offences	19	..	19	23	..	23	40	..	40
Bigamy	1	..	1	3	..	3	4	..	4
Other offences against the person	19	3	22	12	4	16	9	2	11
Total	449	8	457	475	12	487	516	12	528
Against property—									
Robbery	115	2	117	149	7	156	128	6	134
Breaking and entering—									
Houses	307	12	319	262	14	276	267	18	285
Shops	38	..	38	77	1	78	71	1	72
Other	47	..	47	52	..	52	73	3	76

VICTORIA—SUPREME AND COUNTY COURTS : NUMBER OF PERSONS
CONVICTED OF SPECIFIC OFFENCES—*continued*

Offence (a)	1971			1972			1973		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
Larceny (excluding motor vehicles and cattle and sheep)	137	17	154	110	11	121	110	18	128
Illegal use and larceny of motor vehicles	123	1	124	114	4	118	71	1	72
Cattle and sheep stealing	29	..	29	19	..	19	13	1	14
Other offences against property	73	4	77	82	6	88	94	8	102
Total	869	36	905	865	43	908	827	56	883
Fraud, forgery, and false pretences	144	20	164	142	34	176	128	21	149
Miscellaneous offences (b)	265	14	279	233	13	246	265	16	281
Grand total	1,727	78	1,805	1,715	102	1,817	1,736	105	1,841

(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—SUPREME AND COUNTY COURTS : PERSONS CONVICTED
OF SPECIFIC OFFENCES : RESULT OF HEARING, 1973

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	..	..	..	..	..	2	4	6
Attempted murder	..	..	3	..	..	1	1	5
Manslaughter	..	..	20	..	3	2	..	25
Manslaughter with motor vehicle	..	..	..	..	..	..	..	..
Culpable driving causing death	7	..	6	..	2	..	2	17
Assault with grievous bodily harm	7	8	32	..	26	13	8	94
Assault	8	8	5	..	6	5	6	38
Carnal knowledge (under 16 years)	44	6	8	..	66	40	6	170
Carnal knowledge (16 and under 18 years)	..	..	..	..	..	1	..	1
Incest	1	..	6	..	2	1	..	10
Rape	3	1	24	..	3	4	..	35
Indecent assault on female	12	5	8	..	8	11	..	44
Indecent assault on male	2	3	4	..	9	10	..	28
Unnatural offences	5	9	13	..	6	5	2	40
Bigamy	1	..	..	..	3	..	..	4
Other offences against the person	1	1	5	..	1	3	..	11
Total	91	41	134	..	135	98	29	528
Against property—								
Robbery	4	5	65	..	15	19	26	134
Breaking and entering—								
Houses	12	50	48	..	68	72	35	285
Shops	4	6	28	..	17	15	2	72
Other	1	8	31	..	19	15	2	76
Larceny (excluding motor vehicles and cattle and sheep)	21	19	18	..	49	20	1	128
Illegal use and larceny of motor vehicles	14	10	21	..	8	14	5	72
Cattle and sheep stealing	2	..	1	..	9	2	..	14
Other offences against property	17	11	15	..	35	15	9	102
Total	75	109	227	..	220	172	80	883
Fraud, forgery, and false pretences	13	26	16	..	65	29	..	149
Miscellaneous offences (c)	49	64	46	..	68	36	18	281
Grand total	228	240	423	..	488	335	127	1,841

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

(b) The death sentence, which has not been carried out in Victoria since 1967, was repealed in April 1975.

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

VICTORIA—SUPREME AND COUNTY COURTS : AGES OF PERSONS CONVICTED OF SPECIFIC OFFENCES, 1973

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	3	..	1	1	..	..	6
Attempted murder	..	..	..	1	1	1	2	5
Manslaughter	2	1	8	6	2	2	4	25
Manslaughter with motor vehicle	..	..	..	..	..	..	..	..
Culpable driving causing death	1	2	7	..	2	1	3	17
Assault with grievous bodily harm	2	14	30	19	9	6	14	94
Assault	1	10	18	3	3	2	1	38
Carnal knowledge (under 16 years)	4	68	65	16	9	1	7	170
Carnal knowledge (16 and under 18 years)	..	..	..	..	3	1	1	1
Incest	1	10	10	6	3	1	4	35
Rape	..	4	10	10	4	4	12	44
Indecent assault on female	..	1	5	3	7	3	8	28
Indecent assault on male	1	3	11	3	2	7	14	40
Unnatural offences	..	..	1	1	1	..	1	4
Bigamy	..	..	3	3	3	1	1	11
Other offences against the person	..	..	..	..	..	..	..	..
Total	13	116	169	74	50	30	76	528
Against property—								
Robbery	5	45	41	18	12	9	4	134
Breaking and entering—								
Houses	17	83	94	39	20	17	15	285
Shops	2	11	28	17	4	8	2	72
Other	2	12	26	18	6	5	7	76
Larceny (excluding motor vehicles and cattle and sheep)	1	16	31	26	18	8	28	128
Illegal use and larceny of motor vehicles	4	22	28	11	4	2	1	72
Cattle and sheep stealing	..	1	5	3	1	2	2	14
Other offences against property	5	16	20	16	19	9	17	102
Total	36	206	273	148	84	60	76	883
Fraud, forgery, and false pretences	1	6	29	34	27	13	39	149
Miscellaneous offences (b)	5	37	102	48	31	22	36	281
Grand total	55	365	573	304	192	125	227	1,841

(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.

Magistrates' Courts

Magistrates' Courts are held at Melbourne, in most suburbs, and at most country centres throughout Victoria. They are presided over by stipendiary magistrates sitting without justices, or in the absence of a magistrate, by two or more justices of the peace, but not exceeding five. Two or more divisions of the Court may sit simultaneously. Stipendiary magistrates are appointed from the ranks of Clerks of Courts. They must have passed qualifying examinations and have had practical experience as such clerks for ten years. In certain circumstances, barristers or solicitors may also be appointed. They are members of the Victorian Public Service and as such retire at the age of 65 years but are completely independent of the Executive, as are other members of the judiciary.

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

There are more than 60 stipendiary magistrates throughout Victoria, but a much larger number of justices, and some 44 circuits (30 in Melbourne and suburbs, and 14 in country centres) over which stipendiary magistrates officiate, comprising about 208 courts which they visit periodically. A number of stipendiary magistrates are stationed in Melbourne at the Magistrates' Court.

All stipendiary magistrates are appointed coroners and in districts outside the area of the City Coroner they exercise the functions of coroners and hold inquests.

In addition, three Traffic Courts have been established in the Melbourne metropolitan area to hear traffic charges laid by members of the Mobile Traffic Branch and Magistrates' Courts are set aside for that purpose. A Metropolitan Industrial Court constituted by specially appointed stipendiary magistrates hears charges laid under the Victorian Labour and Industry Act and committed in the Melbourne metropolitan area. Outside that area these charges are dealt with by stipendiary magistrates in Magistrates' Courts.

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

The civil jurisdiction comprises the ordinary jurisdiction, i.e., generally complaints for causes of action based on simple contracts up to \$200, which may be heard by courts consisting of justices as well as stipendiary magistrates. The special jurisdiction exercised by stipendiary magistrates is much wider, comprising causes of action in both contract and tort up to \$600 (with a few exceptions) and situations where the cause of action in tort arises out of an accident involving a vehicle up to \$1,000. These are called "causes of action determinable summarily". The procedure is somewhat similar to that of the County Court.

In both jurisdictions proceedings may be instituted by ordinary complainant or by way of default summons (except that in specials this is limited to a liquidated amount). Default summonses provide a simpler, more convenient, and readier procedure in that orders may be made without the appearance of the complainant or the hearing of any evidence unless the defendant gives a notice of defence.

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

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

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

With regard to indictable offences triable summarily, Magistrates' Courts have been given power to deal summarily with a number of the less serious indictable offences including theft and kindred offences up to a value of \$2,000 and

some charges of wounding and assault. The procedure laid down ensures that the defendant shall not be deprived of the right to trial by jury if he so desires, as the Court cannot deal with them summarily unless he consents. The preliminary examination of an indictable offence may be held either in the Magistrates' Court or by one or more justices out of court. It is not deemed to be an open court, and publication of the proceedings may be prohibited if it is considered that publication would prejudice the trial. All the evidence is put into writing or recorded and if the court or a justice is satisfied there is sufficient evidence to warrant the defendant being tried or raises a strong or probable presumption of guilt it shall direct him to be tried in either the Supreme Court or the County Court, and may commit him to gaol or release him on bail, or if not so satisfied, shall discharge him. Children's Courts (see pages 870-2) hear all offences by juveniles under the age of 17 years.

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

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

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

VICTORIA—MAGISTRATES' COURTS : CASES OF A CIVIL NATURE

Type of case	1970	1971	1972	1973	1974
Civil cases—					
Number heard	211,893	213,640	213,167	184,761	174,329
Other cases—					
Garnishee	17,264	15,382	11,785	10,102	5,284
Fraud orders	9,737	9,480	10,479	10,195	7,392
Maintenance orders	8,171	10,014	10,141	11,390	12,454
Licences and certificates	27,830	27,453	28,557	28,773	27,052
Show cause summonses	36,149	38,847	34,123	26,549	24,623
Landlord and tenant	4,013	4,878	4,671	4,295	3,351
Miscellaneous	53,651	52,739	46,564	37,725	31,384

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

Nature of offence	1972				1973			
	Convicted		Dismissed, withdrawn, or struck out		Convicted		Dismissed, withdrawn, or struck out	
	Males	Females	Males	Females	Males	Females	Males	Females
Against the person	2,890	93	1,742	62	3,537	116	2,102	58
Against property	11,805	2,064	1,460	205	10,357	2,389	1,366	191
Fraud, forgery, and false pretences	1,746	338	224	35	1,723	407	133	35
Against good order (a)	6,484	654	1,599	96	6,805	517	1,624	110
Driving offences	10,851	138	3,215	36	11,615	145	3,140	37
Miscellaneous (b)	2,235	239	354	34	2,529	290	390	42
Total	36,011	3,526	8,594	468	36,566	3,864	8,755	473

(a) This table excludes arrests for drunkenness. In 1972, 29,255 persons were charged with drunkenness; the corresponding figure for 1973 was 29,470. In most cases the result of the 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, probation, etc.

NOTE. Statistics in the above table have been compiled from Police Department records. (See footnote to summons cases table on the following page.)

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

Result of hearing	1971		1972		1973	
	Males	Females	Males	Females	Males	Females
Fined	14,390	1,537	19,115	1,749	20,755	1,973
Imprisoned for—						
Under 1 month	1,611	144	1,786	129	1,871	138
1 month and under 6 months	4,839	127	4,658	194	3,919	107
6 months and under 12 months	1,055	8	944	6	763	10
1 year and over	380	27	302	3	196	1
Released on probation	2,199	329	2,529	291	2,370	399
Adjourned for a period without probation	1,312	182	1,389	304	1,300	196
Released on recognisance or bond	3,124	580	3,824	829	4,094	997
Other	1,142	30	1,464	21	1,298	43
Total	30,052	2,964	36,011	3,526	36,566	3,864

See footnotes to preceding table.

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

Nature of offence	1972		1973	
	Convicted	Dismissed, withdrawn, struck out	Convicted	Dismissed, withdrawn, 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 Commonwealth and State Acts of Parliament.

NOTE. Details of the sex of offenders are not available for Magistrates' Courts summons cases. Statistics in the above table have been compiled from Law Department records. (See footnote to preceding Arrest Cases tables.)

Children's Court

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

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

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

The Children's Court follows the practice and procedure of Magistrates' Courts, with two main exceptions. The first of these exceptions is that the Court is not bound to observe legal formalities and ceremonies. The second is that the Court is always closed to the public and the media is forbidden from reporting any proceedings. The Court has considerably wider powers than Magistrates' Courts and may deal with any offence except homicide. The child (or the parent if the child is under the age of 15 years) must always consent to the Court

dealing with an indictable offence in a summary manner, otherwise the matter would be tried by a jury in a higher court. Consent is given in almost all cases.

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

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

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

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

An important provision provided for in the *Children's Court Act* 1973 empowers a Court to release a child on a good behaviour bond or to impose a monetary penalty up to a maximum of \$100 without necessarily recording a conviction against the child.

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

The *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. 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.

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

Nature of offence	1972			1973		
	Males	Females	Total	Males	Females	Total
Against the person	899	32	931	1,036	57	1,093
Against property	12,527	755	13,282	11,670	941	12,611
Fraud, forgery, and false pretences	155	107	262	185	47	232
Against good order	991	40	1,031	943	39	982
Driving offences	1,061	8	1,069	1,075	12	1,087
Miscellaneous offences (a)	248	30	278	327	31	358
Total	15,881	972	16,853	15,236	1,127	16,363

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

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

Result of hearing	1972			1973		
	Males	Females	Total	Males	Females	Total
Fined	1,001	17	1,018	1,051	32	1,083
Placed on probation	6,507	382	6,889	5,729	436	6,165
Admitted to Social Welfare Department	1,977	114	2,091	1,957	134	2,091
Sentenced to youth training centre	1,689	9	1,698	1,560	60	1,620
Adjourned without probation	3,153	301	3,454	3,042	298	3,340
Other	480	103	583	804	92	896
Total convictions	14,807	926	15,733	14,143	1,052	15,195
Dismissed, withdrawn, or struck out	1,074	46	1,120	1,093	75	1,168
Total	15,881	972	16,853	15,236	1,127	16,363

**VICTORIA—CHILDREN'S COURTS : CASES SUMMARILY DISPOSED OF :
NUMBER OF CHARGES : NATURE OF OFFENCE AND
RESULT OF HEARING, 1973**

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	286	126	125	87	100	42
Sex offences	42	4	91	38	122	30
Total	328	130	216	125	222	72
Against property—						
Robbery	20	1	31	40	9	1
Breaking and entering	108	46	2,245	1,504	860	146
Larceny (excluding motor vehicles)	225	120	1,697	715	1,087	331
Motor vehicles (larceny and illegal use)	93	102	938	749	362	92
Wilful damage	53	109	215	64	123	32
Other offences against property	54	20	150	63	155	51
Total	553	398	5,276	3,135	2,596	653
Fraud, forgery, and false pretences	11	9	109	44	42	17
Against good order—						
Indecent behaviour, etc.	13	5	31	2	30	8
Other offensive behaviour	24	40	12	5	28	18
Obscene and insulting language	8	51	10	9	19	7
Firearms	14	35	22	16	51	15
Other offences against good order	91	66	161	49	104	38
Total	150	197	236	81	232	86
Driving offences	94	302	260	202	178	51
Miscellaneous offences (b)	32	47	68	124	70	17
Grand total	1,168	1,083	6,165	3,711	3,340	896

(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, probation, etc.

Police warnings for juvenile first offenders

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

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

VICTORIA—POLICE WARNINGS

Offence group (a)	1969		1970		1971		1972		1973	
	Males	Females	Males	Females	Males	Females	Males	Females	Males	Females
Assault (b)	14	..	20	1	10	6	35	5	26	8
Robbery with violence	..	..	1	..	1	..	..	..	..	..
Sex	41	1	45	3	35	2	32	2	34	..
Breaking and larceny (c)	1,113	359	1,271	536	1,290	656	1,416	771	1,708	655
Other offences	284	20	285	20	362	33	481	27	494	48
Total	1,452	380	1,622	560	1,698	697	1,964	805	2,262	711

(a) Based on Major Crime Index 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, 1973

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	..	3	7	14	2	26
	F	..	..	7	1	..	8
Robbery with violence	M	..	..	..	..	..	..
	F	..	..	..	..	..	..
Sex	M	..	..	13	16	5	34
	F	..	..	..	..	..	..
Breaking and larceny (c)	M	244	413	613	380	58	1,708
	F	33	94	251	230	47	655
Other offences	M	58	79	123	168	66	494
	F	4	8	12	15	9	48
Total		339	597	1,026	824	187	2,973

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

(b) Includes grievous bodily harm.

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

Inquests

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

A 1970 amendment to the *Coroners Act* 1958 made provision for the holding of an inquest where a coroner believes that a death has occurred in

or near the area of his jurisdiction and that the body cannot be recovered or has been destroyed. The coroner must first report the facts to the Attorney-General who may direct the inquest to be held.

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

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

- (1) The coroner considers it desirable ;
- (2) in any specified case a law officer so directs ;
- (3) it is expressly provided in any Act that an inquest shall be taken with jurors ;
- (4) a relative of the deceased person so requests ;
- (5) any person knowing the circumstances leading up to the death of the deceased person so requests ; or
- (6) any member of the Victoria Police 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.

VICTORIA—MELBOURNE CORONER'S COURT : INQUESTS HELD

Year	Number of inquests held
1971	1,578
1972	1,517
1973	1,560
1974	1,305
1975	1,574

Committals by coroners

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

VICTORIA—COMMITTALS BY CORONERS

Year	Murder			Manslaughter			Culpable driving		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
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
1974	49	2	51	11	3	14	16	..	16
1975	30	1	31	3	1	4	30	..	30

Legal profession

Introduction

Until 1891 the legal profession in Victoria was divided into two separate branches—barristers and solicitors—as it still is in England and New South

Wales. Solicitors prepared wills, contracts, mortgages, and transfers of land, and generally instituted legal proceedings. Barristers appeared for litigants and accused persons in court and wrote opinions on legal questions in chambers. A litigant or accused person could not approach a barrister directly, but only through a solicitor who instructed the barrister for him.

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

Victorian Bar

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

Most Victorian practitioners choose to specialise either as barristers or as solicitors. The Victorian Bar, an unincorporated association formed in 1900, consists of those who sign the Victorian Bar roll after undertaking to practise exclusively as barristers. In July 1976 there were 555 members of the Bar, including 13 women, in full-time active practice. Four had chambers in Ballarat, Bendigo, or Shepparton. Barristers appointed to the Bench remain members of the Bar.

Barristers spend the first six months reading as a pupil in the chambers of an experienced barrister, receiving practical instruction and guidance in the work and ethics of a barrister. After two months of reading the pupil may take work of his own. Readers must attend lectures by senior barristers on ethics and workmanship. After reading, the barrister takes a tenancy of chambers provided by the Bar-owned company in premises close to the main courts. New barristers usually pay lower rents than more senior barristers.

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

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

Senior barristers may be appointed Queen's Counsel, who specialise in cases requiring more than one counsel and appear with a junior. There were 40 Queen's Counsel practising at the Victorian Bar in July 1976.

In July 1976 eight barristers' clerks acted for varying numbers of practising barristers, ranging from about 40 to about 105 in number. Clerks and their staff inform solicitors of the availability of barristers, negotiate fees, render accounts, and provide telephone and delivery services for the barristers for whom they act. Barristers pay their clerks a percentage of fees received.

The Victorian Bar Council represents the Bar and administers its affairs. Its rulings on ethics and professional conduct bind all members. Its eighteen members are elected each October. Three members are of less than six years standing as barristers and another four of less than fifteen years standing. The Bar Council elects its chairman and other officers, and its affairs are administered by a full-time executive officer. Under the Bar Council, three

administrative committees of members of the Bar Council are empowered to make recommendations to the Bar Council or to make decisions on its behalf—the Executive, Ethics, and Law Reform Committees.

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

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

Law Institute of Victoria

The Law Institute of Victoria is the professional body of those members of the legal profession who practise as solicitors in Victoria. It was established in 1859 and incorporated by an Act of the Victorian Parliament in 1971. The relevant statutory provisions are now included as Part III of the *Legal Profession Practice Act* 1958. All persons admitted to practise as a barrister and solicitor of the Supreme Court of Victoria are eligible for membership of the Law Institute of Victoria, whether they are practising as solicitors or not.

The Institute is governed by a Council consisting of the Attorney-General, the president of each of the nine county law associations, and eighteen members elected by all the members of the Institute. The Council operates through standing committees and committees appointed to deal with specific matters which after detailed consideration submit recommendations to the Council. The Institute is also represented on a number of outside bodies associated with the law.

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

Professional committees and agencies

Chief Justice's Law Reform Committee

This Committee was founded in 1944 by the then Chief Justice to consider making recommendations to the Victorian Parliament for the reform of the law on matters of a non-contentious nature, including the abolition of obsolete and useless rules. Since then it has made some 100 such recommendations, many of which have been given effect to in legislation.

The Committee consists of members of the judiciary, from both the Supreme and County Courts, the Bar, solicitors, and the law faculties of the University of Melbourne and Monash University. The usual number of

members is about twenty, who meet in full committee two or three times each year. Much of the work of the Committee is done by sub-committees comprising members of each branch of the legal profession, who are not necessarily members of the full committee, but who have some expertise in the area under investigation. The reports of the sub-committees are then considered by the full committee; if the Committee considers that a change in the law is desirable, a recommendation is forwarded to the appropriate Victorian Government department.

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

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

Council of Law Reporting in Victoria

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

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

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

Council of Legal Education

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

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

- (1) Relating to the courses of study and examination and service of articles and other qualifications of candidates to practise as barristers and solicitors and for the admission of such candidates to practise; and
- (2) for the admission to practise in Victoria of persons admitted to practise in any State or Territory of the Commonwealth of Australia or in England, Scotland, Northern Ireland, the Republic of Ireland, or any part of Her Majesty's Dominions or the British Commonwealth of Nations.

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

In 1962, following the imposition of the quota system in the Law School at the University of Melbourne, the Council amended its rules so that matriculants excluded by the quota system could attend a course comparable with that

provided by the University of Melbourne for articled clerks but administered by the Royal Melbourne Institute of Technology. Lecturers, tutors, and examiners are appointed by the Council of Legal Education through its Legal Education Committee which prescribes the scope and content of the courses and supervises the examinations. The Council's courses have since continued to be conducted each year at the Royal Melbourne Institute of Technology.

Law Reform Commissioner

The office of Law Reform Commissioner was established by an Act of the Victorian Parliament in 1973. Mr T. W. Smith, Q.C., was appointed as Commissioner on his retirement from the Supreme Court bench, his term commencing on 1 January 1974. The functions of the Commissioner are to advise the Attorney-General on the reform of the law in Victoria, including in particular :

- (1) The simplification and modernisation of the law, having regard to the needs of the community ;
- (2) making the administration of justice generally more economical and efficient ;
- (3) the elimination of anomalies, defects, and anachronisms ;
- (4) the repeal of obsolete or unnecessary enactments ;
- (5) the consolidation, codification, and revision of the law ; and
- (6) the investigation and reporting to the Attorney-General on any matter relating to law reform referred to him by the Attorney-General.

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

The following table shows details of the reports issued by the Law Reform Commissioner during the period from August 1974 to June 1976 :

VICTORIA—LAW REFORM COMMISSIONER : REPORTS ISSUED,
AUGUST 1974 TO JUNE 1976

Date of report	Title of report	Matters on which legislation was recommended
August 1974	Report No. 1—Aspects of the Law of Murder	Abolition of the doctrines of constructive murder ; consequential increase in penalty for manslaughter ; and amendment of Section 40 of the <i>Crimes Act 1958</i>
October 1974	Report No. 2—Criminal Procedure—Miscellaneous Reforms	Creation of a right of appeal from insanity verdicts ; legal aid for bail applications ; notice of alibi defences ; order of addresses in criminal trials ; and taking other admitted offences into consideration on sentencing
January 1975	Report No. 3—Criminal Liability of Married Persons—Special Rules	Coercion ; accessories after the fact ; misprision of felony ; receiving stolen goods ; and conspiracy
January 1976	Report No. 4—Delays in Supreme Court Actions	Changes in the Supreme Court Act and Rules directed to promoting earlier settlements of actions, and the reduction of delays in procedures for bringing actions to trial
June 1976	Report No. 5—Rape Prosecutions (Court Procedures and Evidence)	Reforms in court procedures and rules of evidence affecting rape trials

Australian Legal Aid Office

The Australian Legal Aid Office was established by the Commonwealth Government in July 1973. It provides a general problem-solving service of legal advice for persons with an element of need. Each person seeking help from the Office is seen by a lawyer, the problem identified, and advice given. Further assistance, including assistance in litigation, is available to all persons in matters arising under Commonwealth law, including family law, and in matters arising under State law to persons for whom the Commonwealth Government has a special responsibility, such as those in receipt of social services, Aborigines, ex-servicemen, students, and newcomers to Australia. The assistance is provided by lawyers of the Australian Legal Aid Office or by referral to private legal practitioners.

The criteria for the provision of further assistance are, first, the merit of the applicant's case and, second, the financial position of the applicant—whether he satisfies the means and needs test of the Office. In considering the merits, regard is had to all the circumstances, particularly to any advantage the applicant might gain from the provision of assistance and any disadvantage he might suffer if assistance was refused, and the likelihood that the proceedings will be terminated by a decision, settlement, or otherwise so as to result in a proper and just advantage to the applicant. The means and needs test is the inability of the applicant to afford the cost of representation in the particular case. A system of contributions by applicants towards the cost of assistance has been in operation since 1 August 1975.

The Australian Legal Aid Office operates in each State and Territory of the Commonwealth of Australia. There is a branch office in each of the capital cities, with regional offices located in metropolitan and country centres.

In Victoria, the Australian Legal Aid Office employed 21 lawyers and 46 supporting administrative staff during 1975, and conducted some 25,000 personal interviews.

A more detailed description of the work of the Australian Legal Aid Office can be found on pages 768–71 of the *Victorian Year Book* 1976.

Legal Aid Committee

The Legal Aid Committee was established pursuant to the *Legal Aid Act* 1961, as amended by the *Legal Aid Act* 1969. The Committee comprises four representatives from each of the Law Institute of Victoria and the Victorian Bar Council, who usually serve for a period of one year on an honorary basis.

Legal assistance to persons who are unable to pay ordinary legal costs is given in all criminal and civil matters involving State laws, other than those criminal matters referred to in Part I of the *Legal Aid Act* 1969. There is no fixed means test, each application being treated on its merits. Assistance may be granted either without charge or on condition that a periodical contribution is made towards the costs incurred by the Committee on behalf of the assisted person. When assistance has been approved, a solicitor in private practice is assigned to act for the applicant, and is authorised to brief a barrister when necessary. Out of pocket expenses incurred by the appointed solicitor are reimbursed in full, and accounts from solicitors and barristers are paid at the rate of 80 per cent in accordance with the Act.

VICTORIA—LEGAL AID COMMITTEE : BUSINESS

Type of case	Number of applications			Number actually assisted		
	1973	1974	1975	1973	1974	1975
Divorce	3,333	4,363	1,265	2,174	2,716	75
Maintenance	4,111	4,565	4,115	2,481	2,921	2,506
Custody	368	421	597	209	274	225
Affiliation	463	422	286	316	264	181

VICTORIA—LEGAL AID COMMITTEE : BUSINESS—*continued*

Type of case	Number of applications			Number actually assisted		
	1973	1974	1975	1973	1974	1975
Motor accident damages claims	864	1,072	766	472	542	329
Criminal (Magistrates' Courts and County Court appeals)	1,627	2,922	4,803	997	1,984	2,703
Civil causes	2,318	2,666	2,754	817	978	761
Workers compensation	259	331	317	177	209	147
Probate and testators family maintenance	206	286	122	55	75	23
Others	1,168	1,410	1,749	289	465	358
Total	14,717	18,458	16,774	7,987	10,428	7,308

Further details of voluntary legal aid in Victoria can be found on pages 850-1 of the *Victorian Year Book* 1975.

Leo Cussen Institute for Continuing Legal Education

The Leo Cussen Institute for Continuing Legal Education was established by an Act of the Victorian Parliament in 1972, and consists of representatives of the Victorian Bar Council, the Law Institute of Victoria, the University of Melbourne, and Monash University. The Institute is concerned with two areas of legal education, namely, practical training for law graduates before admission and the continuing education of the legal profession.

Several experimental courses of practical training have been held, culminating in 1975 in a full-time six months legal practice course attended by 65 law graduates as part of their qualification for admission to practise as barristers and solicitors of the Supreme Court of Victoria. In addition, members of the legal profession who have been absent from practice for some time have attended the course or parts of it as a refresher course. A number of different courses are conducted for the legal profession, some in Melbourne and others in the country. It is proposed that this activity will be considerably expanded in the future.

Victoria Law Foundation

The Victoria Law Foundation was established by the *Legal Profession Practice (Victoria Law Foundation) Act* 1967. It comprises ten members. The Chief Justice, the Attorney-General, the President of the Law Institute of Victoria and, under a provision of the *Law Reform Act* 1973, the Law Reform Commissioner, are all *ex officio* members; the Chief Justice is the president of the Foundation. The two *ex officio* members first named, together with the Law Institute of Victoria, each nominate two additional members—"duly qualified legal practitioners"—who are then appointed by the Governor in Council.

The activities of the Foundation encompass:

- (1) Promotion of legal research relating to law reform in Victoria;
- (2) promotion of legal education in Victoria;
- (3) assistance to law libraries in Victoria; and
- (4) improvement of the administration of the law in Victoria.

A more detailed description of the work of the Victoria Law Foundation can be found on pages 860-1 of the *Victorian Year Book* 1975.

ADMINISTRATION OF LAW

Law in Victoria*Introduction*

Law is the body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognises as binding on its members or subjects, and enforceable by judicial means. It has been

said that "substantially speaking, the modern world acknowledges only two great original systems of law, the Roman and the English".

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

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

Law Department

Administration

The political head of the Law Department is the Attorney-General under whose direction and control the Department functions. The Solicitor-General, who advises the Victorian 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 tasks 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 fourteen such prosecutors in 1975 who, like the Solicitor-General, are not public servants, but barristers.

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

Appeal Costs Board

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

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

The Act sets up a Fund, by a surcharge on the issue of writs, summonses, and complaints, for the payment of costs in respect of appeals and aborted hearings, and some adjournments, in such circumstances as are provided for in the Act. Payments are made to cover, for example, the costs incurred in having corrected a wrong decision on a point of law or the costs incurred in respect of a hearing adjourned through illness of a judge. No monies are paid out of the Fund unless the Board certifies that payment is authorised by the Act. There is no provision in the Act for an appeal from a decision of the Board.

Corporate Affairs Office

The functions of the Corporate Affairs Office include the registration of companies and business names, licensing of dealers in securities and as investment advisers, and the conduct of investigations into the affairs of companies.

Corporate affairs legislation commenced in Victoria with the Companies Statute of 1864. There have been continuing changes in the legislation to meet community expectations and a recent significant amendment to the Companies Act was to give effect, from 1 July 1974, to the Interstate Corporate Affairs Agreement. Under this Agreement, the Interstate Corporate Affairs Commission was established and includes the States of Queensland, New South Wales, Victoria, and Western Australia. The objectives of the four participating States are to :

- (1) Achieve increased uniformity in the law relating to companies and the regulation of the securities industry and trading in securities ;
- (2) establish reciprocal arrangements and common standards and procedures in the administration of that law ;
- (3) co-ordinate administration and avoid unnecessary duplication for the better convenience of the public and improved efficiency in the overall administration ; and
- (4) increase the protection the law affords to the investing public.

Court Reporting Branch

The Court Reporting Branch has reported proceedings before the Supreme Court, County Court, and Magistrates' Courts since 1924. All personnel directly engaged in reporting are licensed shorthand writers, or licensed tape recorder operators, under the provisions of the *Evidence Act* 1958.

The principal duties performed in the Supreme Court are Court of Criminal Appeal ; Full Court ; Crime ; Civil Juries ; Causes ; Miscellaneous Causes ; The Practice Court ; Divorce, both defended and undefended ; Land Valuation ; and De Bene Esse cases.

Only criminal proceedings are reported in the County Court. Committal proceedings in Magistrates' Courts are generally reported, particularly if there are many witnesses or if the matter is of an extremely serious nature. All inquests which, *prima facie*, may appear to lead to a committal for trial of the person charged are reported.

Discharged Servicemen's Employment Board

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

- (1) It assists discharged servicemen to find employment and advises the Victorian Government on employment opportunities and the incidence of unemployment among discharged servicemen ;
- (2) it is required to examine and report to the Victorian Government on alleged contraventions of the Preference Act by which employers are required to give preference in placement, re-instatement, and retention in employment of Victorian discharged servicemen who served in a theatre of war and who are clearly suitable and competent for the particular position ; and
- (3) it provides a business advisory and investigation service in Victoria for any person who has served in the Australian or Allied military forces and employs qualified accountants for that purpose. This service is free of charge.

Metropolitan Fair Rents Board and Rental Investigation Bureau

Fair Rents Boards consist of a stipendiary magistrate sitting alone and have the function of determining fair rents of prescribed premises, i.e., premises subject to control under the *Landlord and Tenant Act* 1958, The

matters to which a Fair Rents Board has regard in determining a fair rent are set out in section 64 of the Landlord and Tenant Act. The Fair Rents Board constituted for the Melbourne metropolitan area is known as the Metropolitan Fair Rents Board.

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

Parliamentary Counsel's Office

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

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

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

Patriotic Funds Council of Victoria

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

The main functions of the Council are to :

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

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

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 in only 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.

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	Applications	Applications investigated and reports submitted	Applications not finalised	Applications approved	Applications not approved
1971	813	827	48	535	292
1972	1,144	1,108	84	810	298
1973	1,112	1,014	98	793	221
1974	1,271	1,131	140	909	222
1975	1,385	1,215	170	1,085	130

Raffles Board

The members of the Raffles Board are the delegates of the Attorney-General under section 6 of the *Lotteries, Gaming, and Betting Act* 1966, under which all raffles in Victoria are regulated. The Raffles Board is required to:

- (1) Advise the Victorian Government on policy relating to the legislation, regulation, and administration of raffles in Victoria and to report to the Attorney-General on the results and effectiveness of such policy ;
- (2) advise the public in regard to the conduct of raffles in Victoria ;
- (3) issue consents and impose conditions for the regulation, conduct, and control of all raffles ; and
- (4) ensure that conditions imposed are carried out, that public monies are properly controlled, and that net proceeds are paid into the charitable, patriotic, cultural, non-professional sporting, and social funds for which the raffles may be conducted.

The Victoria Police are responsible for the policing of the Act and are sent copies of all raffle consents issued by the Board.

Registrar-General and Registrar of Titles

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

The Registrar-General also holds the office of Registrar of Titles. In that capacity he administers the system of land registration known as the Torrens System, the main feature of which is a certificate of title guaranteed by the Victorian Government. The Registrar of Titles has registered Crown grants

of all land alienated by the Crown since 2 October 1862. He deals with the conversion of General Law titles to Torrens titles, by issuing certificates of title in place of the old title deeds. He also registers transfers, mortgages, and other dealings with land under the Torrens System, in accordance with the provisions of the *Transfer of Land Act 1958*.

Chief Secretary's Department—regulatory functions

The functions of the Chief Secretary's Department have altered considerably over the years as the increasing complexity of government administration has necessitated the establishment of additional departments to deal almost exclusively with functions that had previously been the responsibility of the Chief Secretary. In this respect, the dual portfolio of Chief Secretary and Premier was divided in 1883, the Factory Inspectorate which operated in the late nineteenth century grew into the Department of Labour and Industry, the Social Welfare Branch became a separate department, the Weights and Measures Branch was transferred to the Local Government Department, and the Gas and Explosives Branch was transferred to the Mines Department. Responsibility for the control of horse racing, for the State Library and the National Gallery, and for fisheries and wildlife was transferred on the formation of new departments. The Archaeological and Aboriginal Relics Office, the Science Museum, and the National Museum were subsequently transferred to these newer departments. The Chief Secretary's Department, however, continues to play a large and important role in the administration of Victoria, retaining an extensive range of functions in both regulatory and other areas of activity.

The Department can be viewed as exercising its regulatory functions in two main ways: by prohibiting certain activities, unless those activities are licensed or registered, and by imposing controls over certain other types of activities.

A wide variety of business activities require licensing under the Acts administered by the Chief Secretary, including auctioneers, estate agents, motor car traders, second-hand dealers, marine dealers, and private agents. In addition, the sale of liquor and the use of firearms is prohibited without an appropriate licence issued under the provisions of Acts administered by the Chief Secretary.

A further range of activities require registration with the Chief Secretary and these include friendly societies and benefit associations, trade unions, and the commercial producers, distributors, and exhibitors of films. A branch of the Chief Secretary's Department, the Office of the Government Statist, is responsible for the registration of all births, deaths, and marriages occurring in Victoria.

Other types of activities are specifically controlled under various Acts and Regulations administered by the Chief Secretary, including the use of motor vehicles and boats, lotteries, gaming and betting, and a wide range of criminal activities referred to in the Summary Offences Act and the Police Offences Act. The Chief Secretary administers restrictions on the availability of certain types of publications imposed after the consideration of reports prepared by the State Advisory Board on Publications. The Office of the Chief Commissioner of Police is the major enforcement agency under the control of the Chief Secretary. The Victoria Police are responsible for detecting and prosecuting offences against all Acts of the Victorian Parliament, whether or not those Acts are administered by the Chief Secretary. The most notable of these is the Crimes Act.

In addition to its regulatory functions, the Department exercises what could be termed social benefit functions. These include the administration of legislation relating to workers compensation, motor vehicle insurance, compensation for persons injured as a result of criminal violence or in assisting police, and compensation for persons injured in motor vehicle accidents.

A further field of responsibility held by the Chief Secretary is the exercise of "protective" functions. These include the protection of animals, the

preservation of public records, and the administration of the Metropolitan Fire Brigades Board, the Country Fire Authority, and the State Emergency Service.

Additional functions of this "omnibus" Department include responsibility for the maintenance of road safety, primarily through the Road Safety and Traffic Authority and the Victoria Police, the conduct of Victorian parliamentary elections, the preparation of electoral and jury rolls, and the publication of the Victorian Government *Gazette*.

Crimes Compensation Tribunal

The *Criminal Injuries Compensation Act 1972* established the Crimes Compensation Tribunal consisting of a person of not less than seven years standing as a barrister and solicitor. The present appointment was made on 20 June 1973, and the first applications under the Act were heard eight days later. The Tribunal administers a scheme designed to compensate persons who have suffered physical injury or nervous shock as a result of a criminal act. Dependants of a person who has died as a result of a criminal act may also be entitled to compensation.

VICTORIA—CRIMES COMPENSATION TRIBUNAL: SUMMARY OF PROCEEDINGS AT 30 JUNE 1975

Item	Particulars
Applications—	
Pending at 1 July 1974	94
Further applications received to 30 June 1975	835
Determinations—	
Final awards made	755
Applications refused	19
Applications withdrawn	1
Applications pending at 30 June 1975	154
Orders made for advance payments of compensation	38
Appeals from refusal of applications	2
Applications received for repayment of compensation by offenders	..
Analysis of final awards—	
Total compensation awarded	\$611,828
Average award of compensation	\$810

Small Claims Tribunals

Small Claims Tribunals, established under the *Small Claims Tribunal Act 1973*, provide a simple and inexpensive procedure for consumers to have their disputes settled outside the ordinary courts. They are administered under the direction of the Minister for Consumer Affairs. These tribunals are constituted by referees, who are appointed from persons qualified as stipendiary magistrates or barristers and solicitors, and were established to hear applications by consumers in respect of claims for payment of amounts under \$1,000.

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

The primary function of the referee is to effect a settlement acceptable to all parties, but if this is impossible he shall either make an order or dismiss the claim; his order shall be final and without appeal. No costs are allowable and

each party conducts its own case without the services of an agent except in the case of corporations or because of necessity. No practising barrister or solicitor is generally allowed to appear. Hearings are in private and sworn evidence, either verbal or in writing, is given, but tribunals are not bound by the rules of evidence and may inform themselves in any way they think fit. A second tribunal has been established.

Licensing legislation

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

The Licensing Court of three members was replaced by the Liquor Control Commission of four members, the chairman being a 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 monies 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 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 monies remaining in the Licensing Fund on 30 June in any financial year are greater than the monies therein on 1 July in that financial year, the surplus is to be transferred into the Consolidated Fund.

VICTORIA—NUMBER OF LIQUOR LICENCES AT 30 JUNE

Type of licence	1972	1973	1974	1975	1976
Hotel	1,453	1,448	1,444	1,441	1,442
Licensed club	384	390	409	423	437
Retail bottled liquor	669	675	692	714	727
Wholesale liquor merchant	99	101	101	100	101
Australian wine	16	15	14	14	14
Canteen	1	2	2	2	2
Vigneron	19	21	28	39	41
Brewer	7	7	7	7	7
Restaurant	196	214	229	253	266
Cabaret	13	16	17	22	24
Ship	1	1	1	..	..
Theatre	3	3	3	5	5
Cider tavern	..	..	1	1	1
Residential	..	..	..	1	2
Total	2,861	2,893	2,948	3,022	3,069

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

Racing legislation

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

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

VICTORIA—RACING AND TROTTING MEETINGS

Particulars	Year ended 31 July—				
	1972	1973	1974	1975	1976
RACING					
Number of meetings—					
Metropolitan courses	69	70	68	76	76
Other courses	381	384	373	379	390
Number of events—					
Metropolitan courses	549	568	565	654	626
Other courses	2,612	2,795	2,779	2,775	2 987
Amount of stakes—					
Metropolitan courses (\$'000)	2,879	3,147	3,994	4,343	5,303
Other courses (\$'000)	1,688	1,967	2,338	2,615	3,227
TROTTING					
Number of meetings—					
Metropolitan courses	44	43	43	43	44
Other courses	202	218	218	230	240
Number of events—					
Metropolitan courses	343	337	342	343	352
Other courses	1,727	1,850	1,839	2,010	2,140
Amount of stakes—					
Metropolitan courses (\$'000)	862	895	979	1,150	1,450
Other courses (\$'000)	802	1,202	1,357	1,828	1,915

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				
1971-72	597	5	102	704
1972-73	447	5	107	559
1973-74	270	..	74	344
1974-75	407	1	93	501
1975-76	344	2	84	430
LIABILITIES (\$'000)				
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
1974-75	4,862	82	5,218	10,162
1975-76	19,943	42	3,586	23,571
ASSETS (\$'000)				
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
1974-75	1,430	14	2,681	4,125
1975-76	1,408	5	3,533	4,946

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.

The present main functions of the Victoria Police may be summarised as :
 (1) Maintaining law and order and protecting persons and property ;

- (2) preventing crime ;
- (3) detecting offenders who have committed crimes ;
- (4) conducting prosecutions for offences punishable by a Magistrates' Court, and conducting proceedings in indictable matters up to the stage of committal for trial ;
- (5) controlling road traffic, preventing congestion and accidents, and investigating accidents which do occur ; and
- (6) assisting anyone in need, particularly in times of emergency.

The requirements of (6) above extend from such 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 these disaster-type situations the police 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 those 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.

Several interesting features of police work have been developed in recent decades. Among them have been the introduction of police-women and police cadets, wireless patrols, a communications centre, and mobile traffic patrols. Since the first two women were appointed as police agents in 1918, the involvement of women has increased gradually with a significant growth in numbers occurring in recent years. In 1924 the first women were sworn in as constables and by mid-1976 there were 300 police-women in a total police force of 6,322 serving in almost all areas of police activity.

A junior police corps, now known as police cadets, was formed in 1955 with the aim of raising police strength by ensuring a steady flow of trained recruits.

Wireless patrols were first used successfully in 1923 and their use has steadily increased until now all patrol cars are in direct communication with headquarters. The communications centre has grown from a small 2 kw transmitter to the present D24 complex which connects with all parts of Victoria. An on-line computer system rapidly provides information on stolen and wanted motor vehicles and vehicles driven by criminals. The computer forms an integral part of a system which will eventually encompass all police records of criminal histories, stolen property, fingerprints, and methods of criminal operation.

Road patrol activity is designed to detect traffic offences, to check the road-worthiness of vehicles, to educate drivers and, particularly by means of "courtesy cars", to control traffic problem areas. The use of aircraft by the Police Air Wing has also assisted in traffic control.

In 1971 the Victorian Government received a report from Colonel Sir Eric St Johnston who had been commissioned to assess the role of the Victoria Police amid changing social and economic conditions. Arising from his report a considerable restructuring of organisation and administrative arrangements has occurred since 1971. This reforming, 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 the lower levels of the Victoria Police, especially in the Melbourne 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 by the Victoria Police.

In this recent period it has been possible to expand the police services provided to the public, especially on the outer fringes of Melbourne—those areas which, during the last decade, have experienced rapid housing development and population growth. This has proved possible by adopting the concept of team policing, to ensure that existing resources are utilised to their full capacity. The team policing concept, which provides that in emergencies operational units will ignore divisional and district boundaries, enables the Victoria Police radio control system to deploy all available police mobile units to areas of need.

To support this concept, each metropolitan police district has its own group of personnel formed into a crime car squad of 26 members that provides a most effective anti-crime patrol capability.

Support for the crime car squads is provided by independent patrol groups in both the Uniformed Operations Department and the Traffic Department of the Victoria Police. They provide the flexibility which is so 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 most important single concern facing the Victoria Police is the motor vehicle accident rate and the consequent road toll. With annual increases 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 steadily each year. Under these circumstances, it is the belief of the Police Department that the impact of such legislation as the requirement to fit and wear seat belts, the influence of road safety campaigns conducted by the media, and the pressure of continuing police efforts to improve driver behaviour, have succeeded in containing the road toll.

To assist in containing the road toll and improving the standards of driver behaviour encountered on Victoria's streets and highways, the metropolitan group of the Mobile Traffic Section is decentralised into four divisions, each of which is responsible for a separate geographic area. In addition, a Mobile Task Force assists in the detection of traffic offences and special traffic groups have the responsibility of patrolling the major highways of the State, upon which a disproportionate share of the traffic fatalities occur.

Many of the other functions of the Victoria Police are performed by specialist squads which deal with such matters as homicide, criminal investigation, company fraud, arson, and search and rescue. A forensic science laboratory provides valuable assistance in the detection of offenders in many of these areas. The Mounted Branch and the Dog Squad are respectively responsible for the use of horses and dogs in the operations of the Victoria Police.

The Police Regulation Act, and its Regulations, and Police Standing Orders control the conduct of members and the internal affairs of the Victoria Police, and two statutory bodies, the Police Service Board and the Police Discipline Board, have jurisdiction in aspects of such control.

VICTORIA—POLICE FORCE AT 30 JUNE

Particulars	1972	1973	1974	1975	1976
Authorised strength	5,372	5,572	6,000	6,250	6,500
Actual strength (a)	5,274	5,510	5,881	6,018	6,322
C.I.B., etc. (b)	733	798	846	737	749
Police-women	144	163	218	245	300
Cadets	250	217	244	256	284
Reservists	53	48	53	56	105
Number of inhabitants per active police officer	672	651	618	612	584

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

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

Further reference, 1976

COMPANY LAW IN VICTORIA *

Introduction

During the last eighteen years there has been considerable company legislation in Victoria. A new Companies Act was passed in 1958 and this was followed in 1961 by the passage of the current Act. There has for some time been general accord among Commonwealth and State Governments that it would be desirable to achieve substantial uniformity in their companies legislation.

In 1967 it was decided that there should be a further review of company law and in August of that year the Standing Committee of Attorneys-General appointed three persons to constitute the Company Law Advisory Committee. Their task was to "inquire into and report on the extent of the protection afforded to the investing public by the existing provisions of the Uniform Companies Act and to recommend what additional provisions (if any) [were] reasonably necessary to increase that protection". The Committee submitted seven interim reports and its recommendations have formed the basis of a number of significant amendments to the *Companies Act* 1961.

An important recent development in the administration of company law in Australia was the establishment in 1974 of the Interstate Corporate Affairs Commission. The Commission was constituted pursuant to the Interstate Corporate Affairs Agreement, which was signed on 18 February 1974 on behalf of the States of Victoria, New South Wales, and Queensland, as participating States. The Agreement remained (and remains) open for signature on behalf of any other State or Territory of the Commonwealth of Australia. It was subsequently signed on behalf of Western Australia. Amendments to the various States Companies Acts, ratifying the Agreement, came into operation on 1 July 1974 in the case of Victoria, New South Wales, and Queensland and, on 1 July 1975 in the case of Western Australia. The Commission, consisting of two representatives from each of the participating States, was established with the object of securing uniformity in administration and reciprocal arrangements within the participating States with respect to several important matters. One result has been to avoid a considerable amount of the duplicated work which was formerly required of companies in complying with the legislation of States in which they carry on business outside their home States; there has been a consequent increase in the efficiency of the administration of the Companies Acts of the participating States.

Since the Second World War the number of company registrations have risen substantially as a result not only of the immense increase in Victorian trade, commerce, and industry, but also of the increasing interest being shown in the State by companies whose origins are overseas or in other parts of Australia. The number of companies registered in Victoria at 31 December 1975 was 87,596 comprising 81,703 companies incorporated in Victoria, 1,703 incorporated outside Victoria and registered here as "foreign" companies, and 4,190 recognised companies. The comparable figures for 31 December 1945 were 8,704 companies incorporated in Victoria and 75 "foreign" companies.

The following outline of the principal provisions of the Act indicates the general nature of the legislation operating in Victoria. Detailed information on particular aspects is available from the Act, and Rules and Regulations made under the Act.

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

General provisions

Nature of companies

Companies are legal entities distinct from the body of their members and are generally formed to carry on some commercial undertaking. However, a company may be formed for any lawful purpose and many are established to carry on, for example, charitable, educational, and other enterprises not usually associated with profit making. To safeguard the interests of shareholders and creditors and others dealing with a company, the latter must be registered and the Act prescribes various detailed requirements with which it must comply. It also contains provisions regulating the appointment and conduct of the officers of a company. The Act is administered by the Commissioner for Corporate Affairs (formerly known as the Registrar of Companies) and provides for a Companies Auditors Board which is responsible for the registration and discipline of company auditors and liquidators. Official liquidators for the purpose of conducting the winding up of companies and assisting the Court in a winding up are appointed by the Attorney-General.

There are various types of companies used according to the nature of the enterprise and the type of liability to be undertaken by the members. Thus a company may be a company limited by shares, a company limited by guarantee, a company limited by shares and guarantee, an unlimited company or, in the case of a mining company, a "no liability" company. Where a company is limited by shares, the shareholder's liability is limited to the unpaid amount of the nominal value of his shares. Proprietary companies must restrict the right to transfer shares and limit the number of members (excluding employees) to fifty. They must also prohibit invitations to the public to subscribe for shares or debentures in, or to deposit money with, the company. Where a company is limited by guarantee, the members undertake to contribute up to a specified amount in the event of the company being liquidated. In the case of a "no liability" company, the acceptance of shares does not involve any liability to pay calls or contribute in a winding up.

Business partnerships are limited to twenty persons but partnerships up to fifty persons in particular cases may be allowed by the Governor in Council for a profession or calling not customarily carried on by a corporation, and partnerships of accountants of up to one hundred are permitted.

Registration of companies

In forming a company, the promoters must adhere to certain procedures prescribed by the Act. First, the company must be registered. Registration is effected by five or more (in the case of a proprietary company, two or more) persons subscribing their names to a Memorandum of Association. In the Memorandum of Association are included the name and objects of the company, the amount of share capital and shares (if any), and a statement that the liability of the company is limited (and if so in what manner) or unlimited. Companies incorporated in Victoria are (unless they provide otherwise) assumed to have extensive powers as set out in the Third Schedule to the Act.

The Commissioner for Corporate Affairs has wide discretionary powers to refuse registration of a company if he considers the name undesirable and this power is exercised to prevent the registration of companies of the same or similar names. The Act provides for reservation of an available company name for two months and the Commissioner may extend this period for a further two months. The Act makes provision for a company to register Articles of Association regulating its affairs. If, or to the extent that, it does not do so, one of the model sets of Articles contained in the Fourth Schedule to the Act will apply.

Prospectuses

As many companies seek to raise money from the public, the Act requires them to comply with particular conditions where public subscriptions are involved. Prospectuses for shares or debentures in or for the deposit of money with a company must include a substantial amount of detailed information including an auditor's report concerning profits and losses, assets and liabilities, and rates of dividends. The auditor's report must also deal with any guarantor and subsidiary company and any other corporation whose shares are being acquired and any business which is being acquired. No form of application for shares or debentures being offered to the public can be issued, circulated, or distributed until a prospectus has been registered. The Act also limits strictly the amount of information which may be given in an advertisement of a prospectus. Directors and others authorising the issue of a prospectus containing an untrue statement or omitting material information may not only become liable to pay compensation to subscribers for shares or debentures, but may also be guilty of one or more criminal offences involving heavy penalties, including imprisonment.

A public company having a share capital which does not issue a prospectus on formation must, before allotting shares or debentures, issue a statement in lieu of a prospectus containing information similar to that required in a full prospectus.

Shares and share capital

Whenever shares are allotted, a return must be filed with the Commissioner within one month of allotment. If the shares are not allotted for cash, the return must be accompanied by the relevant contract (or copy thereof) or, if there is no written contract, certain particulars must be provided. Shares can only be issued at a discount with the approval of the Court. Shares may be issued at a premium, but the value of the premium must be transferred to a "share premium account" which is only available for specified purposes. Companies can issue redeemable preference shares, but redemption can only take place if the shares are fully paid up and must be made from profits available for dividend or from the proceeds of a fresh issue made for the purposes of redemption.

In the course of a company's development it sometimes becomes necessary to alter the share capital, e.g., by increasing the number of shares available for subscription. The Act permits a company, subject to certain conditions, to alter the provisions of its Memorandum or Articles of Association, to increase share capital, and to alter share capital in various ways. Reduction of share capital requires confirmation by the Court, which has the duty of protecting the interests of creditors. Companies are, in general, prohibited from giving financial assistance in connection with the purchase of their own shares or otherwise dealing with or lending money on their own shares.

Debentures and charges

Companies must keep in the State a register of debenture holders and, if debentures are offered to the public for subscription in the State, must make provision for a corporate trustee for debenture holders. The Act contains extensive provisions dealing with the qualifications of the trustee, the provisions to be inserted in a trust deed, and the duties of the trustee. A borrowing corporation must lodge quarterly reports with the Commissioner and also a half-yearly profit and loss account. Certain charges given by companies require registration with the Commissioner if they are to be effective against a liquidator and other creditors.

Directors

The Act contains a number of provisions relating to the appointment and conduct of directors and their responsibilities. These include provisions for disclosing interests in contracts, the prohibition of loans to directors, the liability of directors who use confidential information to their own advantage, and the keeping of a register of directors' shareholdings. There must be at least three directors of a public company and at least two directors of a proprietary company. In the case of a public company at least two of the directors, and in the case of a proprietary company at least one of the directors, must ordinarily reside in Australia.

Annual general meeting

A company must hold a meeting of its shareholders at least once in every calendar year (except the year of incorporation) and not more than fifteen months after the holding of the preceding annual general meeting. Shareholders are entitled to vote by proxy. All companies must file an annual return with the Commissioner.

Accounts and audit

The Act provides in detail for the keeping and audit of accounts and requires companies to make out annually a balance sheet and profit and loss account which must be sent to members at least seven days before the annual meeting. These accounts are available to the public as, except in the case of an exempt proprietary company, a copy of the annual accounts must accompany the annual return. The Act requires directors to attach a report to each balance sheet dealing with a wide range of their company's activities. Included among the matters with which the report must deal are the amount to be paid in dividends, writing off of bad debts, valuation of assets, and any significant changes in the company's affairs which have occurred since the end of the financial year.

Investigation

The Act enables a company's affairs to be investigated either by inspectors appointed by the Governor in Council or by specially appointed investigators. Inspectors may also be appointed to investigate ownership of shares or debentures and the circumstances of their acquisition or disposal.

Takeovers

Takeover offers cannot be made unless prescribed notices are given and detailed procedures are followed. Special provision has recently been made to prevent the takeover of Australian-owned companies by foreign corporations. The Commonwealth Government has passed legislation which is designed to permit it to freeze such takeovers pending inquiry into their desirability. If the appropriate Minister decides that a takeover would be contrary to the national interest he may make an order preventing the implementation of the takeover offer.

Other provisions

As well as providing in detail for the winding up of companies (either by the Court or voluntarily), the Act also makes provision, in lieu of winding up, for the official management of companies which are unable to pay their debts as and when they become due. The amending Acts which ratified the Interstate Corporate Affairs Agreement introduced the concept of a recognised company which is a corporation incorporated under a declared law of a participating State. In substance, a recognised company may establish or maintain a place of business in a participating State without registration as a foreign company;

and it may circulate a prospectus in any participating State without registering it or obtaining approval for it otherwise than in its State of incorporation. Corporations incorporated outside the State which are not recognised companies must register as foreign companies if they establish a place of business or carry on business within the State.

Future developments

Section 51 (xx) of the Commonwealth Constitution gives the Commonwealth Parliament power to make laws with respect to trading and financial corporations formed within the Commonwealth and with respect to foreign corporations. The practical ambit of the power remains substantially undefined. One view is that the power presupposes the existence of companies before Commonwealth legislative competence arises. If this is a correct view, the Commonwealth Parliament could not regulate the formation of companies. However, once a company is formed it may be possible for the Commonwealth to control all the dealings it has with the public (including, for example, issues of shares and borrowings) and perhaps also internal company administration in matters such as accounts, registers of members, and payments of calls which have a direct relation to outward transactions.

In 1973 the Commonwealth Government introduced the Corporations and Securities Industry Bill, which represented the first attempt by the Commonwealth to legislate for the administration on a national level of company laws. The Bill provided for the establishment of a Corporations and Exchange Commission, which was intended to have wide powers to require the registration, and to control the conduct of, corporations to which the Bill applied, as well as exercise strict control over securities granted by such corporations. The Bill was not intended to replace the various States Companies Acts and, in particular, it contemplated that companies should continue to be incorporated under those Acts. Considerable debate about the Commonwealth Bill arose out of the fusion in the one piece of legislation of laws relating to companies and to the securities industry. For this, and other reasons, the Bill did not proceed. This would suggest that for the present the administration of the laws regulating the incorporation and conduct of companies may continue to be within the province of the several States.

Further legislation with a view to ensuring uniformity in the Companies Acts of the participating States under the Interstate Corporate Affairs Agreement came into operation in 1976. If the primary objectives of the Agreement are achieved, and especially if other States become parties to the Agreement, the necessity for national companies legislation would appear to be less strong than it was formerly.

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; Family law in Victoria, 1975; Law relating to trade practices and consumer legislation, 1976

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