

## 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 (Law of Succession in this edition of the *Victorian Year Book*).

### JUDICIAL SYSTEM

#### Victorian Judiciary

VICTORIA—SUPREME COURT AT 31 JULY 1980

---

#### *Chief Justice*

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

#### *Puisne Judges*

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

---

## VICTORIA—JUDGES OF THE COUNTY COURT AT 31 JULY 1980

*Chief Judge*

Desmond Patrick Whelan, C.B.E.

*Judges*

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

**Courts***High Court of Australia*

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

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

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

The Constitution provided for the High Court to have jurisdiction to hear and determine appeals from all 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 original jurisdiction of the High Court has been exercised over the years to a considerable degree, in particular by the use of prerogative writs of prohibition and mandamus in relation to Commonwealth officers, and to control the jurisdiction of

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

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

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

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

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

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

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

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

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

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

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

### *Supreme Court*

The Supreme Court, as its name implies, is the supreme court of the State, having jurisdiction over all matters, civil and criminal, which have not been excluded by statute. It is established by the Constitution Act. It is the counterpart of the English Supreme Court of Judicature which embodies the Court of Appeal and the High Court. The latter is divided into three divisions—Queen's Bench, Chancery, and Family. The Constitution Act provides for the Supreme Court to consist of not more than twenty-one judges of whom one is the Chief Justice. All judges are appointed from the ranks of practising barristers of not less than eight years standing, and retire at the age of 72 years. The Supreme Court consisted of a Chief Justice and 20 puisne judges at 1 July 1980. (Judges of the Supreme Court other than the Chief Justice are called puisne judges.)

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

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

The officers of the Supreme Court are the Masters (four in 1980), the Listing Master, the Taxing Master, the Prothonotary, the Sheriff, and the Registrar of Probates. The Masters deal with various matters entrusted to them by Rules of Court made by the judges, and are responsible for the investment of money ordered to be paid into court. The Listing Master arranges the lists of cases for hearing. The Taxing Master fixes and settles bills of costs. The Masters, the Listing Master, and the Taxing Master must be barristers and solicitors of five years standing, or, in the case of the Taxing Master, of equivalent experience. The Prothonotary is virtually the secretary of the Supreme Court. Writs are issued from his office, and he has the custody of documents filed therein. The Sheriff who, like the Prothonotary is a public servant (the Masters, the Listing Master, and the Taxing Master are not under the Public Service Act), is responsible for the execution of writs, the summoning of juries, and the enforcement of 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 relief. The writ is a formal document by which the Queen commands the defendant, if he wishes to dispute the plaintiff's claim, to "enter an appearance" within a specified time; otherwise 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 the right of appeal to the Full Court. If a successful plaintiff fails to obtain from the defendant money

which the latter has been ordered to pay, he may issue a writ of *fieri facias*, addressed to the Sheriff and directing him to sell sufficient of the defendant's real and personal property to satisfy the 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 many cases an appeal lies as of right to the High Court of Australia from decisions of the Supreme Court, but in others it can only be taken with the leave or special leave of the High Court. In some cases an appeal may be taken to the Privy Council from a decision of the Supreme Court but the leave of the Court must first be obtained. (With respect to appeals to the Privy Council from the High Court, see page 679.)

*County Court*

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

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

In July 1980, the County Court comprised a Chief Judge (a position created in March 1975 in recognition of the increasing importance of the Court) and 32 judges. An appointee to the County Court bench must have practised as a barrister or solicitor for seven years before appointment and retires at the age of 72 years.

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

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

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

*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	1975	1976	1977	1978	1979
Causes entered—					
For assessment of damages	25	22	36	58	81
For trial	1,575	1,243	1,299	1,423	2,304
Number of cases listed for trial—					
By juries of six	937	802	1,150	1,001	1,291
By a Judge	575	644	682	681	896

VICTORIA—SUPREME COURT: CIVIL BUSINESS—*continued*

Particulars	1975	1976	1977	1978	1979
Verdicts returned for—					
Plaintiff	111	180	148	180	221
Defendant	19	15	18	17	22
Amount awarded (\$'000)	1,683	2,488	1,815	2,144	3,449
Writs of summons issued	6,407	6,264	7,327	9,087	11,960
Other original proceedings	190	175	137	137	164
Appellate proceedings (other than criminal appeals) heard and determined—					
By Full Court	73	82	76	63	53
By a Judge	140	155	120	135	114

## VICTORIA—SUPREME COURT: WRITS RECEIVED BY THE SHERIFF

Year	Possession	<i>Fieri Facias</i>	<i>Venditioni Exponas</i>	Attachment	Order to arrest, including ships	Other	Total
1975	560	830	—	13	3	17	1,423
1976	462	997	8	1	1	20	1,489
1977	662	1,178	4	4	4	25	1,877
1978	751	1,426	6	1	5	17	2,206
1979	1,120	1,611	15	3	7	21	2,777

## VICTORIA—COUNTY COURT: MELBOURNE BUSINESS

Particulars	1975	1976	1977	1978	1979
Summonses issued	31,180	32,669	39,611	46,270	47,843
Warrants of execution issued	10,289	10,261	14,559	17,426	18,702
Appeals from Magistrates' Courts lodged	3,653	3,768	4,003	4,738	5,678
Adoption applications filed	837	810	817	706	650
Civil trials heard	2,646	3,003	3,143	2,893	2,533
Criminal trials heard	1,792	(a) 460	1,352	1,118	1,202

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

## VICTORIA—SUPREME AND COUNTY COURTS: NUMBER OF PERSONS CONVICTED: NATURE OF PENALTY

Result of hearing	1976			1977			1978		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
Fined	188	8	196	151	7	158	166	8	174
Imprisoned—									
Under 3 months	60	1	61	32	1	33	18	2	20
3 months and under 6 months	30	—	30	31	—	31	34	1	35
6 months and under 12 months	77	1	78	73	4	77	89	—	89
12 months	58	3	61	57	2	59	72	3	75
Over 12 months and under 2 years	40	1	41	62	—	62	60	4	64
2 years and over	221	12	233	267	9	276	279	8	287
Placed on probation	207	31	238	167	28	195	160	13	173
Released on recognisance or bond	232	16	248	190	29	219	200	26	226
Other	69	4	73	62	3	65	67	—	67
Total	1,182	77	1,259	1,092	83	1,175	1,145	65	1,210

VICTORIA—SUPREME AND COUNTY COURTS:  
AGES OF PERSONS CONVICTED

Age group (years)	1976			1977			1978		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
Under 20	206	13	219	182	12	194	205	8	213
20-24	388	24	412	349	24	373	389	19	408
25-29	231	17	248	245	16	261	213	12	225
30-34	131	7	138	106	8	114	125	7	132
35-39	74	5	79	74	8	82	69	13	82
40-44	64	5	69	46	6	52	52	3	55
45-49	35	3	38	44	4	48	40	1	41
50-54	26	1	27	25	2	27	24	—	24
55-59	13	2	15	9	3	12	14	2	16
60 and over	14	—	14	12	—	12	14	—	14
Total	1,182	77	1,259	1,092	83	1,175	1,145	65	1,210

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

Offence (a)	1976			1977			1978		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
Against the person—									
Murder	9	2	11	12	5	17	18	2	20
Attempted murder	4	1	5	4	—	4	1	—	1
Manslaughter	14	1	15	12	1	13	15	3	18
Manslaughter with motor vehicle	—	—	—	—	—	—	—	—	—
Culpable driving causing death	9	—	9	20	—	20	14	—	14
Assault with grievous bodily harm	70	4	74	80	7	87	80	4	84
Assault	25	7	32	24	3	27	29	—	29
Carnal knowledge (under 16 years)	159	—	159	135	—	135	92	—	92
Carnal knowledge (16 and under 18 years)	—	—	—	—	—	—	1	—	1
Incest	10	1	11	5	—	5	7	—	7
Rape	37	—	37	31	—	31	53	—	53
Indecent assault on female	61	—	61	36	—	36	31	—	31
Indecent assault on male	42	—	42	29	—	29	33	—	33
Unnatural offences	25	—	25	18	—	18	16	—	16
Bigamy	—	—	—	1	—	1	—	—	—
Other offences against the person	22	2	24	16	1	17	25	2	27
Total	487	18	505	423	17	440	415	11	426
Against property—									
Robbery	116	6	122	156	11	167	164	5	169
Breaking and entering—									
Houses	88	3	91	61	1	62	52	—	52
Shops	23	—	23	23	—	23	42	2	44
Other	29	1	30	20	2	22	48	—	48
Larceny (excluding motor vehicles and cattle and sheep)	63	15	78	58	10	68	61	7	68
Illegal use and larceny of motor vehicles	47	1	48	50	1	51	26	—	26
Cattle and sheep stealing	1	1	2	—	—	—	—	—	—
Other offences against property	97	6	103	74	6	80	92	3	95
Total	464	33	497	442	31	473	485	17	502
Fraud, forgery, and false pretences	83	11	94	89	14	103	64	18	82
Miscellaneous offences (b)	148	15	163	138	21	159	181	19	200
Grand total	1,182	77	1,259	1,092	83	1,175	1,145	65	1,210

(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: NATURE OF PENALTY, 1977**

Offence (a)	Fined	Im- prison- ed twelve months and under	Im- prison- ed over twelve months	Sen- tence sus- pended on enter- ing a bond	Placed on pro- bation	Other	Total
<b>Against the person—</b>							
Murder	—	—	10	1	3	3	17
Attempted murder	—	—	3	1	—	—	4
Manslaughter	—	—	13	—	—	—	13
Manslaughter with motor vehicle	—	—	—	—	—	—	—
Culpable driving causing death	3	2	11	1	—	3	20
Assault with grievous bodily harm	12	13	22	20	17	3	87
Assault	1	5	6	7	6	2	27
Carnal knowledge (under 16 years)	49	13	9	36	28	—	135
Carnal knowledge (16 and under 18 years)	—	—	—	—	—	—	—
Incest	—	—	2	3	—	—	5
Rape	—	2	23	—	1	5	31
Indecent assault on female	7	8	8	9	4	—	36
Indecent assault on male	5	3	3	8	10	—	29
Unnatural offences	—	—	12	—	6	—	18
Bigamy	—	—	—	1	—	—	1
Other offences against the person	1	2	4	6	3	1	17
Total	78	48	126	93	78	17	440
<b>Against property—</b>							
Robbery	3	7	99	11	29	18	167
<b>Breaking and entering—</b>							
Houses	3	19	23	6	7	4	62
Shops	2	8	10	—	2	1	23
Other	—	6	11	2	1	2	22
Larceny (excluding motor vehicles and cattle and sheep)	15	15	14	16	6	2	68
Illegal use and larceny of motor vehicles	6	14	6	5	19	1	51
Cattle and sheep stealing	—	—	—	—	—	—	—
Other offences against property	14	16	8	19	18	5	80
Total	43	85	171	59	82	33	473
Fraud, forgery, and false pretences	15	26	5	44	12	1	103
Miscellaneous offences (b)	22	41	36	23	23	14	159
Grand total	158	200	338	219	195	65	1,175

(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: NATURE OF PENALTY, 1978**

Offence (a)	Fined	Im- prison- ed twelve months and under	Im- prison- ed over twelve months	Sen- tence sus- pended on enter- ing a bond	Other	Total
<b>Against the person—</b>						
Murder	—	—	15	—	5	20
Attempted murder	—	—	—	—	1	1
Manslaughter	—	—	14	3	1	18
Manslaughter with motor vehicle	—	—	—	—	—	—
Culpable driving causing death	—	2	12	—	—	14
Assault with grievous bodily harm	12	11	35	15	11	84
Assault	9	13	1	5	1	29
Carnal knowledge (under 16 years)	30	9	3	27	23	92
Carnal knowledge (16 and under 18 years)	—	—	—	—	1	1
Incest	—	1	5	—	1	7
Rape	3	1	32	3	14	53
Indecent assault on female	2	6	9	3	11	31
Indecent assault on male	6	5	3	12	7	33
Unnatural offences	2	2	7	1	4	16
Bigamy	—	—	—	—	—	—
Other offences against the person	—	5	5	7	10	27
Total	64	55	141	76	90	426



VICTORIA—SUPREME AND COUNTY COURTS: PERSONS CONVICTED OF SPECIFIC OFFENCES: NATURE OF PENALTY, 1978—*continued*

Offence (a)	Fined	Im- prison- ed twelve months and under	Im- prison- ed over twelve months	Sen- tence sus- pended on enter- ing a bond	Other	Total
<b>Against property—</b>						
Robbery	2	12	96	19	40	169
Breaking and entering—						
Houses	2	15	14	6	15	52
Shops	3	11	15	8	7	44
Other	1	14	10	6	17	48
Larceny (excluding motor vehicles and cattle and sheep)	10	17	9	25	7	68
Illegal use and larceny of motor vehicles	3	8	3	4	8	26
Cattle and sheep stealing	—	—	—	—	—	—
Other offences against property	21	9	15	24	26	95
<b>Total</b>	<b>42</b>	<b>86</b>	<b>162</b>	<b>92</b>	<b>120</b>	<b>502</b>
Fraud, forgery, and false pretences	9	25	10	28	10	82
Miscellaneous offences (b)	59	53	38	30	20	200
<b>Grand total</b>	<b>174</b>	<b>219</b>	<b>351</b>	<b>226</b>	<b>240</b>	<b>1,210</b>

(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: AGES OF PERSONS CONVICTED OF SPECIFIC OFFENCES, 1977

Offence (a)	Persons convicted—age group (years)							Total
	17 and under	18-19	20-24	25-29	30-34	35-39	40 and over	
<b>Against the person—</b>								
Murder	1	2	4	5	2	—	3	17
Attempted murder	—	—	—	2	1	—	1	4
Manslaughter	1	—	2	4	1	3	2	13
Manslaughter with motor vehicle	—	—	—	—	—	—	—	—
Culpable driving causing death	1	—	10	4	2	—	3	20
Assault with grievous bodily harm	1	11	33	10	11	6	15	87
Assault	2	3	8	5	3	3	3	27
Carnal knowledge (under 16 years)	4	42	52	20	5	3	9	135
Carnal knowledge (16 and under 18 years)	—	—	—	—	—	—	—	—
Incest	—	—	—	1	—	2	2	5
Rape	2	4	16	5	3	—	1	31
Indecent assault on female	2	3	6	7	4	4	10	36
Indecent assault on male	—	1	7	6	3	4	8	29
Unnatural offences	—	2	1	6	4	2	3	18
Bigamy	—	—	—	—	—	1	—	1
Other offences against the person	—	—	4	5	2	2	4	17
<b>Total</b>	<b>14</b>	<b>68</b>	<b>143</b>	<b>80</b>	<b>41</b>	<b>30</b>	<b>64</b>	<b>440</b>
<b>Against property—</b>								
Robbery	3	33	77	33	14	2	5	167
Breaking and entering—								
Houses	—	11	25	16	4	3	3	62
Shops	2	—	9	7	2	2	1	23
Other	—	2	4	12	2	1	1	22
Larceny (excluding motor vehicles and cattle and sheep)	1	2	14	19	8	10	14	68
Illegal use and larceny of motor vehicles	4	12	17	15	1	1	1	51
Cattle and sheep stealing	—	—	—	—	—	—	—	—
Other offences against property	4	10	14	19	14	6	13	80
<b>Total</b>	<b>14</b>	<b>70</b>	<b>160</b>	<b>121</b>	<b>45</b>	<b>25</b>	<b>38</b>	<b>473</b>
Fraud, forgery, and false pretences	—	3	18	21	15	17	29	103
Miscellaneous offences (b)	4	21	52	39	13	10	20	159
<b>Grand total</b>	<b>32</b>	<b>162</b>	<b>373</b>	<b>261</b>	<b>114</b>	<b>82</b>	<b>151</b>	<b>1,175</b>

(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: AGES OF PERSONS  
CONVICTED OF SPECIFIC OFFENCES, 1978**

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	—	7	4	2	1	5	20
Attempted murder	—	—	—	—	1	—	—	1
Manslaughter	—	1	3	4	1	5	4	18
Manslaughter with motor vehicle	—	—	—	—	—	—	—	—
Culpable driving causing death	—	1	6	1	2	—	4	14
Assault with grievous bodily harm	—	9	31	12	12	9	11	84
Assault	—	6	12	7	3	1	—	29
Carnal knowledge (under 16 years)	1	30	40	12	5	—	4	92
Carnal knowledge (16 and under 18 years)	—	—	—	1	—	—	—	1
Incest	—	—	1	—	1	2	3	7
Rape	5	12	24	8	2	—	2	53
Indecent assault on female	2	3	11	3	4	3	5	31
Indecent assault on male	—	4	5	6	2	2	14	33
Unnatural offences	—	2	2	3	3	2	4	16
Bigamy	—	—	—	—	—	—	—	—
Other offences against the person	—	4	8	6	6	1	2	27
<b>Total</b>	<b>9</b>	<b>72</b>	<b>150</b>	<b>67</b>	<b>44</b>	<b>26</b>	<b>58</b>	<b>426</b>
Against property—								
Robbery	7	30	79	31	14	6	2	169
Breaking and entering—								
Houses	1	8	25	6	5	5	2	52
Shops	1	4	20	8	6	2	3	44
Other	4	15	13	4	3	6	3	48
Larceny (excluding motor vehicles and cattle and sheep)	—	6	12	15	11	4	20	68
Illegal use and larceny of motor vehicles	1	9	9	3	3	1	—	26
Cattle and sheep stealing	—	—	—	—	—	—	—	—
Other offences against property	3	15	29	22	10	9	7	95
<b>Total</b>	<b>17</b>	<b>87</b>	<b>187</b>	<b>89</b>	<b>52</b>	<b>33</b>	<b>37</b>	<b>502</b>
Fraud, forgery, and false pretences	—	4	9	22	14	13	20	82
Miscellaneous offences (b)	—	24	62	47	22	10	35	200
<b>Grand total</b>	<b>26</b>	<b>187</b>	<b>408</b>	<b>225</b>	<b>132</b>	<b>82</b>	<b>150</b>	<b>1,210</b>

(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, or by justices of the peace. 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 retire on or before the age of 65 years but are completely independent of the Executive, as are other members of the judiciary.

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

There are more than 60 stipendiary magistrates throughout Victoria, but a much larger number of justices of the peace, and some 49 circuits over which stipendiary magistrates officiate, comprising over 200 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 operate 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 causes of action in both contract and tort up to \$3,000 (with a few exceptions). The procedure is somewhat similar to that of the County Court.

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

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

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

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

With regard to indictable offences triable summarily, Magistrates' Courts have been given power to deal summarily with a number of the less serious indictable offences including theft and kindred offences up to a value of \$10,000 and some charges of wounding and assault. The procedure laid down ensures that the defendant shall not be deprived of the right to trial by jury if he so desires, as the Court cannot deal with them summarily unless he consents. The preliminary examination of an indictable offence may be held either in the Magistrates' Court or by one or more justices out of court. It is not deemed to be an open court, and publication of the proceedings may be prohibited if it is considered that publication would prejudice the trial. All the evidence is put into writing or recorded and if the court or a justice is satisfied there is sufficient evidence to warrant the defendant being tried or raises a strong or probable presumption of guilt it shall direct him to be tried in either the Supreme Court or the County Court, and may commit him to gaol or release him on bail, or if not so satisfied, shall discharge him. Children's Courts (see pages 689-92) hear most offences by juveniles under the age of 17 years.

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

The following tables show particulars of Magistrates' Courts business. In any comparison of the figures with those relating to earlier Victorian figures, other States, or other countries, consideration should be given to the 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	1974	1975	1976	1977	1978
Civil cases—					
Number heard	174,329	174,903	146,850	133,919	133,204
Other cases—					
Garnishee	5,284	4,418	2,367	435	392
Fraud orders	7,392	6,572	5,105	3,686	3,748
Maintenance orders	12,454	12,703	5,374	7,427	7,416
Licences and certificates	27,052	26,990	28,770	28,092	27,259
Show cause summonses	24,623	23,110	15,070	2,083	1,472
Landlord and tenant	3,351	2,674	2,372	2,227	2,241
Miscellaneous	31,384	28,477	22,545	23,678	22,165

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

Nature of offence	1977				1978			
	Convicted		Dismissed, withdrawn, or struck out		Convicted		Dismissed, withdrawn, or struck out	
	Males	Females	Males	Females	Males	Females	Males	Females
Against the person	3,491	224	2,477	111	3,736	221	2,813	152
Against property	13,817	3,281	1,957	287	15,035	3,454	2,039	321
Fraud, forgery, and false pretences	2,408	836	269	86	3,054	870	482	138
Against good order (a)	7,487	999	1,818	114	8,554	1,298	2,097	155
Driving offences	20,554	459	3,541	86	24,816	621	4,756	125
Miscellaneous (b)	4,570	650	846	135	5,062	607	887	153
<b>Total</b>	<b>52,327</b>	<b>6,449</b>	<b>10,908</b>	<b>819</b>	<b>60,257</b>	<b>7,071</b>	<b>13,074</b>	<b>1,044</b>

(a) This table excludes arrests for drunkenness. In 1978, 20,999 persons were charged with drunkenness; the corresponding figure for 1977 was 21,231. 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 this table have been compiled from records of the Victoria Police. (See footnote to Summons Cases table on page 689.)

#### VICTORIA—MAGISTRATES' COURTS: ARREST CASES SUMMARILY CONVICTED: NUMBER OF CHARGES AND NATURE OF PENALTY

Nature of penalty	1976		1977		1978	
	Males	Females	Males	Females	Males	Females
Fined	33,376	3,261	32,955	3,516	39,711	4,027
Imprisoned for—						
Under 1 month	2,042	220	2,001	129	2,072	139
1 month and under 6 months	3,801	132	4,409	144	4,837	197
6 months and under 12 months	885	13	877	23	1,178	22
1 year and over	272	12	324	5	354	5
Released on probation	2,669	540	3,242	803	3,147	808
Adjourned for a period without probation	1,212	194	1,257	161	939	119
Released on recognisance or bond	5,058	1,476	5,602	1,596	6,230	1,693
Other	1,252	33	1,660	72	1,789	61
<b>Total</b>	<b>50,567</b>	<b>5,881</b>	<b>52,327</b>	<b>6,449</b>	<b>60,257</b>	<b>7,071</b>

See footnotes to preceding table.

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

Nature of offence	1977		1978	
	Convicted	Dismissed, withdrawn, struck out	Convicted	Dismissed, withdrawn, struck out
Against the person	1,639	1,524	1,693	1,639
Against property	5,134	2,477	6,299	2,700
Against good order	3,008	696	3,154	830
Driving offences	207,671	15,891	212,640	16,412
Miscellaneous (a)	48,427	9,029	52,677	7,867
<b>Total</b>	<b>265,879</b>	<b>29,617</b>	<b>276,463</b>	<b>29,448</b>

(a) Miscellaneous offences are generally breaches of Commonwealth and Victorian Acts of Parliament.

NOTE. Details of the sex of offenders are not available for Magistrates' Courts summons cases. Statistics in this table have been compiled from records of the Victorian Law Department. (See footnote to preceding Arrest Cases tables on page 688.)

### *Children's Court*

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

In the Melbourne metropolitan area, 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 Community Welfare Services Act. The Court has no jurisdiction in civil matters, adoption, maintenance, or custody.

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

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

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

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

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

An important provision provided for in the *Children's Court Act 1973* empowers a Court to release a child on a good behaviour bond or to impose a monetary penalty up to a maximum of \$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 Community Welfare Services Department and those aged 15 years or over may be detained in a youth training centre for a specified period not exceeding two years or, if more than one charge is proved, not more than three years in all. The *Children's Court Act 1973* empowers a Court to fix an aggregate period of detention rather than a specific sentence on each separate charge.

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

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

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

Nature of offence	1977			1978		
	Males	Females	Persons	Males	Females	Persons
Against the person	673	46	719	960	72	1,032
Against property	9,745	387	10,132	11,813	565	12,378
Fraud, forgery, and false pretences	136	39	175	165	95	260
Against good order	870	51	921	1,044	48	1,092
Driving offences	1,068	4	1,072	1,185	8	1,193
Miscellaneous offences (a)	317	33	350	272	48	320
Total	12,809	560	13,369	15,439	836	16,275

(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 NATURE OF PENALTY

Nature of penalty	1977			1978		
	Males	Females	Persons	Males	Females	Persons
Fined	1,118	40	1,158	1,163	12	1,175
Placed on probation	4,779	203	4,982	5,527	289	5,816
Community Welfare Services Department (a)	3,740	139	3,879	4,604	201	4,805
Adjourned without probation	1,400	64	1,464	1,259	79	1,338
Other	1,112	70	1,182	2,072	158	2,230
Total convictions	12,149	516	12,665	14,625	739	15,364
Dismissed, withdrawn, or struck out	660	44	704	814	97	911
Total	12,809	560	13,369	15,439	836	16,275

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

VICTORIA—CHILDREN'S COURTS: CASES SUMMARILY DISPOSED OF:  
NUMBER OF CHARGES: NATURE OF OFFENCE AND  
NATURE OF PENALTY, 1977

Nature of offence	Nature of penalty					
	Dis- missed, with- drawn, etc.	Otherwise dealt with				
		Fined	Placed on probation	Community Welfare Services Depart- ment (a)	Ad- jour- ned without probation	Other
Against the person—						
Assault and grievous bodily harm	146	112	78	124	60	49
Sex offences	20	1	46	19	31	24
Other	2	—	6	—	—	1
Total	168	113	130	143	91	74

VICTORIA—CHILDREN'S COURTS: CASES SUMMARILY DISPOSED OF:  
NUMBER OF CHARGES: NATURE OF OFFENCE AND  
NATURE OF PENALTY, 1977 *continued*

Nature of offence	Nature of penalty					
	Dis- missed, with- drawn, etc.	Otherwise dealt with				
		Fined	Placed on probation	Community Welfare Services Depart- ment (a)	Ad- jour- ned without probation	Other
<b>Against property—</b>						
Robbery	6	2	26	36	1	1
Breaking and entering	71	83	1,602	1,286	315	257
Larceny (excluding motor vehicles)	116	147	1,416	885	426	325
Motor vehicles (larceny and illegal use)	71	121	874	757	211	217
Wilful damage	35	53	161	67	69	38
Other offences against property	21	24	154	152	59	47
<b>Total</b>	<b>320</b>	<b>430</b>	<b>4,233</b>	<b>3,183</b>	<b>1,081</b>	<b>885</b>
<b>Fraud, forgery, and false pretences</b>	<b>10</b>	<b>6</b>	<b>74</b>	<b>47</b>	<b>19</b>	<b>19</b>
<b>Against good order—</b>						
Indecent behaviour, etc.	3	3	18	6	11	7
Other offensive behaviour	17	32	4	6	6	8
Obscene and insulting language	9	46	10	11	15	2
Firearms	16	26	28	13	37	15
Other offences against good order	82	74	158	111	73	74
<b>Total</b>	<b>127</b>	<b>181</b>	<b>218</b>	<b>147</b>	<b>142</b>	<b>106</b>
<b>Driving offences</b>	<b>53</b>	<b>357</b>	<b>255</b>	<b>237</b>	<b>98</b>	<b>72</b>
<b>Miscellaneous offences (b)</b>	<b>26</b>	<b>71</b>	<b>72</b>	<b>122</b>	<b>33</b>	<b>26</b>
<b>Grand total</b>	<b>704</b>	<b>1,158</b>	<b>4,982</b>	<b>3,879</b>	<b>1,464</b>	<b>1,182</b>

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

(b) 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: NATURE OF OFFENCE AND  
NATURE OF PENALTY, 1978

Nature of offence	Nature of penalty				
	Dis- missed, with- drawn, etc.	Otherwise dealt with			
		Fined	Placed on probation	Community Welfare Services Depart- ment (a)	Other
<b>Against the person—</b>					
Assault and grievous bodily harm	258	73	169	134	167
Sex offences	25	8	76	27	67
Other	3	4	12	8	1
<b>Total</b>	<b>286</b>	<b>85</b>	<b>257</b>	<b>169</b>	<b>235</b>
<b>Against property—</b>					
Robbery	11	9	23	31	2
Breaking and entering	84	95	1,474	1,532	778
Larceny (excluding motor vehicles)	127	238	1,859	1,222	1,185
Motor vehicles (larceny and illegal use)	69	171	1,046	974	374
Wilful damage	31	56	182	91	145
Other offences against property	61	30	232	114	132
<b>Total</b>	<b>383</b>	<b>599</b>	<b>4,816</b>	<b>3,964</b>	<b>2,616</b>
<b>Fraud, forgery, and false pretences</b>	<b>37</b>	<b>12</b>	<b>106</b>	<b>50</b>	<b>55</b>
<b>Against good order—</b>					
Indecent behaviour, etc.	4	7	10	6	40
Other offensive behaviour	9	17	9	3	20
Obscene and insulting language	12	46	14	16	21

VICTORIA—CHILDREN'S COURTS: CASES SUMMARILY DISPOSED OF:  
NUMBER OF CHARGES: NATURE OF OFFENCE AND  
NATURE OF PENALTY, 1978—*continued*

Nature of offence	Nature of penalty				
	Dis- missed, with- drawn, etc.	Otherwise dealt with			
		Fined	Placed on probation	Community Welfare Services Department (a)	Other
Firearms	7	32	27	34	74
Other offences against good order	77	68	237	125	177
<b>Total</b>	<b>109</b>	<b>170</b>	<b>297</b>	<b>184</b>	<b>332</b>
Driving offences	72	258	302	295	266
Miscellaneous offences (b)	24	51	38	143	64
<b>Grand total</b>	<b>911</b>	<b>1,175</b>	<b>5,816</b>	<b>4,805</b>	<b>3,568</b>

(a) Includes "admitted to care" and "placed in custody" of the Community Welfare Services 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)	1974		1975		1976		1977		1978	
	Males	Females	Males	Females	Males	Females	Males	Females	Males	Females
Assault (b)	44	7	51	8	62	6	97	12	71	11
Robbery with violence	—	—	1	—	3	—	1	—	3	—
Sex	66	1	71	3	76	3	89	—	73	1
Breaking and larceny (c)	2,067	884	2,373	1,249	2,477	1,140	3,839	1,275	3,795	1,498
Other offences	612	73	789	86	903	96	1,331	123	1,203	134
<b>Total</b>	<b>2,789</b>	<b>965</b>	<b>3,285</b>	<b>1,346</b>	<b>3,521</b>	<b>1,245</b>	<b>5,357</b>	<b>1,410</b>	<b>5,145</b>	<b>1,644</b>

(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, 1977

Offence group (a) and sex	Age last birthday (years)					Total	
	10 and under	11, 12	13, 14	15, 16	17 and over		
Assault (b)	Males	5	6	30	39	17	97
	Females	—	—	4	2	6	12
Robbery with violence	Males	—	1	—	—	—	1
	Females	—	—	—	—	—	—
Sex	Males	—	5	28	39	17	89
	Females	—	—	—	—	—	—
Breaking and larceny (c)	Males	244	632	1,323	1,333	307	3,839
	Females	48	144	514	471	98	1,275
Other offences	Males	67	138	392	541	193	1,331
	Females	5	12	36	48	22	123
<b>Total</b>		<b>369</b>	<b>938</b>	<b>2,327</b>	<b>2,473</b>	<b>660</b>	<b>6,767</b>

(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, 1978

Offence group (a) and sex	Age last birthday (years)					Total	
	10 and under	11, 12	13, 14	15, 16	17 and over		
Assault (b)	Males	3	6	13	29	20	71
	Females	—	—	2	8	1	11
Robbery with violence	Males	—	—	2	1	—	3
	Females	—	—	—	—	—	—
Sex	Males	—	3	17	39	14	73
	Females	—	—	1	—	—	1
Breaking and larceny (c)	Males	255	602	1,272	1,329	337	3,795
	Females	45	196	655	503	99	1,498
Other offences	Males	59	112	312	496	224	1,203
	Females	2	9	37	52	34	134
Total		364	928	2,311	2,457	729	6,789

(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 Community Welfare Services Act and the Registration of Births, Deaths, and Marriages Act. Coroners and deputy coroners are appointed by the Governor in Council, every stipendiary magistrate being appointed a coroner for the State of Victoria. Deputy coroners have jurisdiction in the districts for which they have been appointed. In addition, a justice of the peace has jurisdiction to hold an inquest, but only if requested to do so by a police officer in charge of a station, or by a coroner.

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

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

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

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

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

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

VICTORIA—MELBOURNE CORONER'S  
COURT: INQUESTS HELD

Year	Number of inquests held
1975	1,574
1976	1,457
1977	1,497
1978	1,361
1979	1,445

*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
1975	30	1	31	3	1	4	30	—	30
1976	22	3	25	8	1	9	27	—	27
1977	21	6	27	9	4	13	36	—	36
1978	32	3	35	5	3	8	33	1	34
1979 (a)	30	5	35	5	—	5	39	—	39

(a) In 1979, there were two committals for infanticide and none for arson.

**Legal profession***Introduction*

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

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

*Victorian Bar*

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

Most Victorian practitioners choose to specialise either as barristers or as solicitors. The Victorian Bar, an unincorporated association formed in 1900, consists of those who sign the Victorian Bar roll after undertaking to practise exclusively as barristers. In August 1980, there were 691 members of the Bar, including 45 women, in full-time active practice. Six had chambers in Ballarat, Bendigo, or Geelong. Barristers appointed to the Bench remain members of the Bar.

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

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

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

Senior barristers may be appointed Queen's Counsel, who specialise in cases requiring more than one counsel and appear with a junior. There were 61 Queen's Counsel practising at the Victorian Bar in August 1980.

In August 1980, nine barristers' clerks acted for varying numbers of practising barristers, ranging from about 20 to about 125 in number. Clerks and their staff inform solicitors of the availability of barristers, negotiate fees, render accounts, and provide telephone and delivery services for the barristers for whom they act. Barristers pay their clerks a percentage of fees received.

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

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

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

#### *Law Institute of Victoria*

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

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

Apart from the services which the Institute provides for its members, it also performs important public duties. It has a statutory obligation to control solicitors' trust accounts, to issue annual practising certificates, to administer the Solicitors' Guarantee Fund, and to consider claims for compensation out of the Fund by persons who allege they have suffered pecuniary loss as a result of a defalcation committed by a solicitor. The Institute also prescribes standards of professional conduct and insists on all solicitors maintaining a high ethical standard, investigating all complaints concerning the conduct of a solicitor, and in appropriate cases instituting disciplinary action. The Institute endeavours to maintain and improve the public image of the legal profession and to educate the public

about the services which a solicitor can provide and the occasions on which it is desirable to consult a solicitor. It is active in law reform. Committees meet regularly to consider anomalies 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.

*Disciplinary procedures for members of the legal profession*

Since January 1979, the discipline of the legal profession has been overseen by two tribunals, which for the first time include non-lawyers. The tribunals were established by the *Legal Profession Practice (Solicitor's Disciplinary Tribunal) Act 1978* and the *Legal Profession Practice (Discipline) Act 1970*.

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

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

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

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

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

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

### **Professional committees and agencies**

#### *Chief Justice's Law Reform Committee*

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

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

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

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

#### *Council of Law Reporting in Victoria*

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

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

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

#### *Council of Legal Education*

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

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

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

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

*Law Reform Commissioner*

The office of Law Reform Commissioner was established by an Act of the Victorian Parliament in 1973. Mr T. W. Smith, Q.C., served as Commissioner from 1 January 1974 to 31 December 1976. Sir John Minogue, Q.C., was appointed Commissioner on 28 June 1977. The functions of the Commissioner are to advise the Attorney-General on the reform of the law in Victoria, including in particular: (1) The simplification and modernisation of the law, having regard to the needs of the community; (2) making the administration of justice generally more economical and efficient; (3) the elimination of anomalies, defects, and anachronisms; (4) the repeal of obsolete or unnecessary enactments; (5) the consolidation, codification, and revision of the law; and (6) the investigation and reporting to the Attorney-General on any matter relating to law reform referred to him by the Attorney-General.

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

The following table shows details of the reports issued by the Law Reform Commissioner during the period from January 1975 to December 1980:

VICTORIA—LAW REFORM COMMISSIONER: REPORTS ISSUED,  
JANUARY 1975 TO DECEMBER 1980

Date of report	Title of report	Matters on which legislation was recommended
January 1975	Report No. 3—Criminal Liability of Married Persons—Special Rules	Coercion; accessories after the fact; misprision of felony; receiving stolen goods; and conspiracy
January 1976	Report No. 4—Delays in Supreme Court Actions	Changes in the Supreme Court Act and Rules directed to promoting earlier settlements of actions, and the reduction of delays in procedures for bringing actions to trial
June 1976	Report No. 5—Rape Prosecutions (Court Procedures and Evidence)	Reforms in court procedures and rules of evidence affecting rape trials
December 1976	Report No. 6—Spouse Witnesses (Competence and Compellability)	Compellability of spouse witnesses to give evidence
June 1978	Report No. 7—Innocent Misrepresentation	Classification of the remedies available where a contract is induced by innocent or negligent misrepresentation.
June 1979	Report No. 8—Pre-Incorporation Contracts	Ratification of extracts made by a company prior to incorporation
October 1980	Report No. 9—Duress, Necessity and Coercion	Reform and statutory reformulation of the law relating to Duress and Necessity as defences in the criminal law; repeal of the law relating to coercion.
December 1980	Report No. 10—Delivery of Deeds	Reforms of the law relating to the delivery of deeds.

*Australian Institute of Criminology*

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

*Criminology Research Council*

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

*Commonwealth Legal Aid Commission*

The Commonwealth Legal Aid Commission was established under the *Commonwealth Legal Aid Commission Act 1977*. The work of the Commission includes examination of the need for legal assistance in Australia and advice upon the most effective means of satisfying that need. The Commission is required to make recommendations concerning legal assistance in Commonwealth matters and Commonwealth financial assistance to State and Territorial legal aid commissions. It also reports upon the functioning of those commissions including their accessibility, effectiveness, and economy. The Commission is required to collect and publish statistics of legal aid schemes in Australia and to research all aspects of legal assistance, including new methods of financing and providing legal assistance. It also advises upon educational programmes to promote an understanding by the public of their rights, powers, privileges, and duties.

*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 security, Aboriginals, 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. An applicant who can afford to contribute towards the cost of his case is asked to do so.

The policy of the Commonwealth Government is to rationalise legal aid throughout Australia by the establishment, under State or Territorial legislation, of independent statutory legal aid commissions in each State and Territory that will absorb the functions of the Australian Legal Aid Office and the legal aid schemes operated by State Governments and by law societies. Western Australia, South Australia, Queensland, Victoria, and the Australian Capital Territory have passed legislation to establish commissions. On 30 June 1980, legal aid commissions were in operation in Western Australia, South Australia, the Australian Capital Territory, and Queensland. The Victorian commission was expected to commence operations in 1981.

The Australian Legal Aid Office continues to operate in Victoria, New South Wales, Tasmania, and the Northern Territory, and there is a branch office in each of the relevant capital cities with regional offices located in metropolitan and country centres. In Victoria, offices are situated in Melbourne, Brunswick, Geelong, Glenroy, and Sunshine. On 30 June 1980, the Australian Legal Aid Office employed 23 lawyers and 38 supporting administrative staff in Victoria. The lawyers provide advice at interview to approximately 1,160 persons each month; further assistance is provided by the lawyers, or by referral to private legal practitioners, to an average of 1,150 persons each month.

**Further reference:** *Victorian Year Book 1976*, pp. 768-71

*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 of the normal fee, in accordance with the Act.

## VICTORIA—LEGAL AID COMMITTEE: BUSINESS

Type of case	Number of applications					Number actually assisted				
	1975	1976	1977	1978	1979	1975	1976	1977	1978	1979
Divorce	1,265	384	226	196	72	75	2	—	1	—
Maintenance	4,115	1,306	1,351	1,580	1,574	2,506	770	838	1,202	1,317
Custody	597	233	374	298	178	225	67	97	139	170
Affiliation	286	216	226	170	146	181	120	151	150	92
Motor accident damages claims	766	513	418	745	812	329	299	304	469	483
Criminal (Magistrates' Courts and County Court appeals)	4,803	5,913	6,131	9,472	13,448	2,703	2,815	3,166	5,769	8,401
Civil causes	2,754	2,620	2,913	2,952	2,757	761	631	923	1,052	1,112
Workers compensation	317	265	303	303	261	147	127	162	172	161
Probate and testators family maintenance	122	72	56	78	63	23	15	12	33	31
Others	1,749	1,418	1,419	1,453	1,307	358	228	288	313	261
<b>Total</b>	<b>16,774</b>	<b>12,940</b>	<b>13,417</b>	<b>17,247</b>	<b>20,618</b>	<b>7,308</b>	<b>5,074</b>	<b>5,941</b>	<b>9,300</b>	<b>12,028</b>

Further reference: Voluntary legal aid, *Victorian Year Book 1975*, pp. 850-1

*Leo Cussen Institute for Continuing Legal Education*

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

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

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

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

The course of practical training is a full-time course extending over a period of six months and covering all major areas of practice. Although the setting is institutional, every effort is made to match the conditions of actual practice. There is both direct teaching and time spent by students working on their own, carrying out exercises corresponding to what might reasonably be expected of them in practice. Instructors are



all drawn from the practising profession. Files of "current matters" are kept, and visits made to government and semi-government offices, courts, registries, and the like.

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

#### *Victoria Law Foundation*

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

The activities of the Foundation encompass:

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

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

## ADMINISTRATION OF LAW

### Law in Victoria

#### *Introduction*

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

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

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

#### *Administration*

#### *Law Department*

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

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 was a Crown Counsel as well as nineteen prosecutors for the Queen in 1980 who, like the Solicitor-General, are not public servants, but barristers.

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

#### *Appeal Costs Board*

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

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

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

#### *Corporate Affairs Office*

The Corporate Affairs Office is responsible for the administration of the *Companies Act 1961*, the *Business Names Act 1962*, and the *Securities Industry Act 1975*.

The functions of the Office include the registration of companies and business names, the examination and registration of takeover documents and prospectuses, making available documents lodged at the Office for public search, licensing dealers in securities and their representatives, licensing investment advisers and their representatives, and the conduct of investigations into the affairs of companies and persons involved in the securities industry.

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 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.

*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*.

*Crimes Compensation Tribunal*

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

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

Item	1976	1977	1978	1979	1980
Applications—					
Pending at 1 July of previous year	154	233	218	321	400
Further applications received to 30 June	856	865	1,117	1,495	1,861
Determinations—					
Final awards made	822	854	987	1,377	1,596
Applications refused or withdrawn	30	16	27	39	26
Applications pending at 30 June	158	218	321	400	639
Orders made for advance payments of compensation	21	25	—	—	—
Appeals from refusal of applications	1	1	—	—	—
Analysis of final awards—					
Total compensation awarded	\$686,035	\$754,918	\$1,049,014	\$1,346,052	\$1,885,310
Average award of compensation	\$835	\$884	\$1,063	\$978	\$1,181

*Government Shorthand Writer's Office*

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

*Motor Accidents Tribunal*

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

*Raffles and Bingo Permits Board*

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

*Registry of Friendly Societies, Benefit Associations, and Industrial and Provident Societies*

The Registry is responsible for the registration of Friendly Societies and their Rules, general supervision of hospital, medical, and funeral associations, and the registration of Industrial and Provident Societies. Financial supervision, including certifying the adequacy of contribution rates, is performed by the Government Statist.

*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.

Legal assistance is provided by the State of Victoria through the Public Solicitor only in the following criminal matters:

- (1) Where any person has been committed for trial or has received notice of trial for an indictable offence against the laws of Victoria;
- (2) where any person has been charged with treason, murder, or manslaughter; and
- (3) to an appellant to the Full Court of the Supreme Court upon any appeal with respect to an indictable offence.

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—				
	Number	Investigated and reports submitted	Not finalised	Approved	Not approved
1974	1,271	1,131	140	909	222
1975	1,385	1,215	170	1,085	130
1976	1,318	1,249	69	1,096	153
1977	1,191	1,107	84	1,013	94
1978	1,236	1,171	65	1,073	98
1979	1,222	1,143	79	1,059	84

Further reference: *Victorian Year Book* 1979, pp. 682-5

*Small Claims Tribunals*

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

established to hear applications by consumers in respect of claims for payment of amounts 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 \$4.00 fee, to the registrar in the Melbourne metropolitan area, or to the clerk of a Magistrates' Court outside that area. The registrar, who provides administrative services to the tribunals, gives notice of the application to the respondent, the trader concerned, and fixes a date for the hearing of the claim. Lodgement of the application with any money claimed to be owed to the trader by the consumer precludes the issue in dispute being heard in any court unless proceedings have already been commenced.

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

Since the tribunals came into operation on 4 February 1974, a total of 15,000 claims have been lodged for determination by the tribunals.

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

Classification	1978-79		1979-80	
	Number	Per cent	Number	Per cent
Food and beverages	2	0.07	6	0.22
Clothing, footwear, and drapery	306	10.18	223	8.26
Consumer durables	686	22.82	603	22.35
Motor vehicles and other transport equipment	852	28.34	736	27.27
Building and construction	611	20.33	584	21.64
Miscellaneous products	168	5.59	118	4.37
Transport and energy services	67	2.23	136	5.04
Insurance and finance	20	0.67	51	1.89
Real estate and accommodation	14	0.47	16	0.59
Miscellaneous services	280	9.31	226	8.37
Total	3,006	100.00	2,699	100.00

#### *Market Court*

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

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

#### *Licensing legislation*

After nearly one hundred years operation of the system of Licensing Magistrates or of the Licensing Court, the Licensing Act was repealed and the Licensing Court abolished by

the *Liquor Control Act* 1968, which came into effect on 1 July 1968. This Act incorporated a number of recommendations of the Royal Commission of Inquiry on Liquor in Victoria.

The Licensing Court of three members was replaced by the Liquor Control Commission of four members, the chairman being a judge of the Liquor Control Commission. Numerous alterations were made in the licensing law and practice of the State, the new Act completely re-writing the law. All fees taken under the new Act and all fines, penalties, forfeitures, and money incurred or accruing under it are paid into the Licensing Fund into which was also paid the amount standing to the credit of the Licensing Fund established under the *Licensing Act* 1958. A complete new code of compensation payable to owners and occupiers of licensed premises deprived of licences is set out in the Act, and provision is made for all payment of compensation out of the Licensing Fund, as well as all costs incurred in connection with the administration of the Act. Where the money remaining in the Licensing Fund on 30 June in any financial year is greater than the money therein on 1 July in that financial year, the surplus is to be transferred into the Consolidated Fund.

#### VICTORIA—NUMBER OF LIQUOR LICENCES AT 30 JUNE

Type of licence	1975	1976	1977	1978	1979
Hotel keeper	1,441	1,442	1,441	1,435	1,432
Club	423	437	452	459	469
Retail bottled liquor	714	727	728	731	744
Wholesale liquor merchant	100	101	102	102	105
Australian wine	14	14	13	13	13
Vignerons	39	41	51	65	67
Brewer	7	7	7	7	7
Restaurant	253	266	269	287	294
Cabaret	22	24	26	29	33
Ship	—	—	—	—	—
Theatre	5	5	5	5	5
Cider tavern	1	1	1	1	2
Residential	1	2	3	3	3
Tourist facility	—	1	6	12	14
Total	3,020	3,068	3,104	3,149	3,188

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

#### Racing legislation

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

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

#### VICTORIA—RACING AND TROTTING MEETINGS

Particulars	Year ended 31 July—				
	1976	1977	1978	1979	1980
RACING					
Number of meetings—					
Metropolitan courses	76	82	84	84	84
Other courses	390	393	389	398	397
Number of events—					
Metropolitan courses	626	655	698	702	688
Other courses	2,987	2,986	3,003	3,138	3,124
Amount of stakes—					
Metropolitan courses	(\$'000) 5,303	5,662	6,118	7,763	8,560
Other courses	(\$'000) 3,227	3,457	3,526	3,758	4,062

VICTORIA—RACING AND TROTTING MEETINGS—*continued*

Particulars	Year ended 31 July—				
	1976	1977	1978	1979	1980
TROTTING					
Number of meetings—					
Metropolitan courses	44	53	55	55	59
Other courses	240	261	267	268	268
Number of events—					
Metropolitan courses	352	415	430	426	443
Other courses	2,140	2,281	2,335	2,360	2,164
Amount of stakes—					
Metropolitan courses (\$'000)	1,450	1,801	1,981	1,934	2,305
Other courses (\$'000)	1,915	2,341	2,406	2,398	2,511

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

*Bankruptcies*

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

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

## VICTORIA—BANKRUPTCIES

Year	Bankruptcies	Orders for administration of deceased debtors' estates	Arrangements with creditors without sequestrations	Total
NUMBER				
1975-76	344	2	84	430
1976-77	393	—	82	475
1977-78	583	2	122	707
1978-79	763	2	208	973
1979-80	1,227	8	229	1,464
LIABILITIES (\$'000)				
1975-76	19,943	42	3,586	23,571
1976-77	7,555	—	10,479	18,034
1977-78	14,890	43	5,466	20,399
1978-79	17,272	68	8,525	25,865
1979-80	33,509	44	10,048	43,601
ASSETS (\$'000)				
1975-76	1,408	5	3,533	4,946
1976-77	2,354	—	9,120	11,474
1977-78	4,750	14	2,794	7,558
1978-79	3,456	29	4,784	8,269
1979-80	6,754	5	2,592	9,351

**Victoria Police***Introduction*

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

- (1) Maintaining law and order;
- (2) protecting the community and its property;
- (3) prevention of crime;
- (4) detection of offenders;



- (5) controlling road traffic, including the alleviation of traffic congestion, prevention of road accidents and, where necessary, the investigation of accidents; and
- (6) assisting anyone in need, particularly in times of emergency.

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

#### *Organisation*

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

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

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

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

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

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

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

#### *Specialised squads*

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

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

#### *Recruitment and training*

The authorised strength of the Police Force at 30 June 1980 was 8,000. Increases in authorised strength are effected by increasing the number of squads in training. Male persons between 18½ years and 35 years and females between 20 years and 35 years, who are accepted as recruits, undergo a 20 weeks course of training at the Police Training Academy, Glen Waverley.

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

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

#### *Crime prevention and detection techniques*

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

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

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

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

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

Forensic science now plays a significant role in the detection of criminal offenders. The Police Forensic Science Laboratory is equipped to provide information on drugs, poisons, flammable liquids, paints, fabrics, soils, and many other substances which by analysis may give some clue to assist in solving a crime. Blood samples taken from motor vehicle accident victims admitted to hospital are analysed at the Laboratory for alcoholic content and the findings may result in prosecutions. A Document Examination Section is equipped to examine handwriting and documents suspected of being forged, and there is a Ballistics Section which provides information on firearms. The Laboratory also has a mobile workshop used in on-site investigations.

#### *Road toll*

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

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

#### *Liaison committees*

A number of liaison committees have been established with other organisations during the past few years in an attempt to overcome various problems. These committees include the Police/Lawyer Liaison Committee; Ethnic Affairs Police Liaison Committee; Police

Community Welfare Services Department Liaison Committee; Media/Police Liaison Committee and Police/Medical Officers' Liaison Committee.

#### *Expenditure*

The provision of a police force involves heavy expenditure. The operational expenses of the Victoria Police Force during 1979-80 were \$181.7m and the expenditure on capital and maintenance works was \$7.72m. The Police Training Academy at Glen Waverley, when completed, will have cost the Victorian Government about \$30m. Victorian Government expenditure on the operations of the Victoria Police Force represents a significant element of the annual Victorian Budget allocations to government departments.

#### VICTORIA—POLICE FORCE AT 30 JUNE

Particulars	1975	1976	1977	1978	1979
Authorised strength	6,250	6,500	6,750	7,500	7,500
Actual strength (a)	6,018	6,320	6,663	7,001	7,468
C.I.B., etc. (b)	846	865	898	961	1,058
Police-women	248	300	332	365	493
Cadets	252	284	265	318	337
Reservists	57	105	133	135	142

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

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

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

### LAW OF SUCCESSION IN VICTORIA\*

#### **Introduction**

The Law of Succession concerns the devolution by law of interests in property. Succession is not concerned with the passing of property by voluntary transfer and contract, nor is it proposed to describe here involuntary succession to property arising out of any change in status, such as bankruptcy, nor that occurring by reason of any compulsory vesting of property either by operation of statute or by any doctrine of forfeiture or escheat. It is intended primarily to describe the passing of property upon death and the manner in which that passing of property is administered and effectuated.

In Victoria, the law relating to the passing of property on death is substantially the same as in other common law jurisdictions in the Commonwealth of Australia and in England. Most Victorian law on the subject was introduced into the Colony of Victoria upon settlement and was derived from English law, being the common law relating to the devolution of land and the civil law as administered by the English Ecclesiastical Courts relating to the devolution of personal property. This distinction between the devolution of land and other property was largely abolished in 1873 and the law on this subject has been substantially the same for both real and personal property since that date, if one makes due allowance for the difference in nature between the two types of proprietary interests. Likewise, the statutory law relating to the passing of property on death and the administration of a deceased person's estate is similar, but not identical, to the law applying in the other Australian States and England.

Upon death a person's property may pass principally in two ways. He may leave a will, by which he states the manner in which his property is to pass and names an executor to have supervision over the passing of that property. Alternatively, if he fails to leave a valid will, he is said to die intestate and his property will pass according to a statutory scheme of distribution. However, in a practical and popular sense, there are other means by which property interests change on the death of an individual and which include the operation of trusts either made by him during his lifetime or under which he holds interests in property, the designation of beneficiaries under insurance policies or superannuation schemes, and the accrual of rights to a survivor upon the death of the holder of property which is jointly owned. The popularity of these alternative methods of dealing with property interests has varied from time to time according to the nature and extent of taxes and duties imposed by both Commonwealth and State Governments.

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

### Wills

Victorian law confers on an adult the privilege of making a will whereby he may dispose of his property to named persons or classes of persons either by gifts of his property, called devises in the case of real property and bequests in the case of personal property, or by trusts affecting either type of property. In addition, it is essential that the maker of the will, commonly called a testator, appoints one or more persons as executor or executors of the will, in order to carry out the dispositions and trusts contained in his will.

The *Wills Act* 1958 requires every person making a will to comply with a number of formalities, other than privileged persons who are defined to include soldiers and sailors on active service and merchant seamen. In substance, a valid non-privileged will must be in writing, signed by the testator at or about the end of the will, and witnessed, or "attested", by two or more witnesses who are present at the time of the testator's signing or hear him acknowledge his signature to them and who themselves subscribe their names to the will in the presence of the testator. Any person of sound mind and understanding over the age of eighteen years may make a will. He may change his mind and make a new will as often as he wishes, so long as he is legally capable of so doing. Alternatively, instead of making a new will he may add to or vary the terms of his will by a document called a codicil, which must be signed and witnessed in the same way as the will itself. Each new will expressly or impliedly revokes an earlier will, but a will is revoked by operation of law upon its deliberate destruction and upon the marriage of the testator, unless the will is made in contemplation of marriage. Unlike the law in certain overseas countries, an oral will or a handwritten, unwitnessed will has no effect in law, except in the case of some privileged wills.

Although in earlier times English law placed restrictions on a testator's freedom in making his will, so as to protect his wife and children, the somewhat arbitrary rules which operated, especially in relation to real estate, up to the beginning of the nineteenth century were gradually all removed, both in England and Victoria, so as to enable completely free disposition of property. This "unbridled testamentary licence" (as one English Lord of Appeal described it in 1972), has provided the basis for the modern law of wills, their interpretation, and administration. However, in 1906, Victoria was the first Australian State to introduce what is commonly known as testator's family maintenance legislation (now called in Victoria "family provision") which has given the Supreme Court a discretionary power to protect members of a testator's family in case he has not left any of them enough of his property for their support. Now any widow, widower, or child, including an illegitimate child, may seek and obtain further provision from the estate of a testator if it can be shown that the distribution of his estate effected by the will is unfair in that it does not make adequate provision for the proper maintenance and support of each of them. To provide for their real needs the Court frequently makes generous orders redirecting property to them by rewriting the terms of a will, in substance if not in form. Few specific guidelines are prescribed and each case is resolved on a discretionary basis, but effectively, freedom of testamentary disposition is no longer absolute where a testator leaves a wife or children.

### Intestacy

Where a person fails to leave a valid will, he is said to die intestate. If his will is partly ineffective, he is intestate to that extent. In each case, the relevant property is distributed after his death according to a statutory scheme of distribution laid down by the *Administration and Probate Act* 1958. If he has failed to leave any will, no executor will have been appointed and the Court must be asked by a relative or creditor to appoint an administrator to deal with his estate. The scheme of distribution is based on a traditional mode of dealing with the personal property of dead persons, but many significant alterations have been made by Parliament in recent years. In particular, the widow, who was formerly confined to one-third of the personal property now receives a predominant share.

By recent amendments to the *Administration and Probate Act* 1958, where a person dies intestate and is survived by either a widow or widower but not by children (or other issue), the widow or widower is entitled to the whole of the estate. Where the intestate is survived also by children (or other issue), the widow or widower receives the first \$50,000 in value

of the estate, and if the estate is worth more than \$150,000 receives one-third of the balance of the estate, the remainder being shared equally between the children. It is only where no widow, widower, or children survive that the other next of kin take in accordance with the somewhat elaborate rules laid down by the Act.

Since 1962, widows, widowers, and children have been able to obtain further provision also from the estate of an intestate person, if the operation of the statutory scheme of distribution fails to make adequate provision for their proper maintenance and support, according to the same rules as apply in the case of wills.

### Administration

Upon death, succession to property is administered by executors and administrators who obtain their power and authority from the Supreme Court and who are subject to its control. Although a person may by will choose an executor to carry out his wishes, the latter's powers are very limited until his authority is ratified by the Court granting him Probate of the will. Thereupon the executor obtains the power to deal with the title to all the testator's property, which he must exercise subject to certain prescribed standards, similar to those applicable to Trustees, and subject to the supervision of the Court.

Where a person dies intestate, or where a testator fails to name an executor who survives him, no power to deal with his estate exists until the Court grants Letters of Administration of the estate to a person called an administrator, who has powers and duties almost identical to those of an executor.

Either an individual or corporation may be appointed executor or administrator, but the Court will not directly appoint any company or corporation other than the Public Trustee or one of the trustee companies controlled pursuant to the *Trustee Companies Act* 1958. The latter are paid for their services by way of a commission laid down by statute, and individual executors and administrators may apply to the Supreme Court which may allow them up to five per cent commission for their "pains and trouble" in administering the estate. Although the procedure for obtaining Probate and Letters of Administration may seem somewhat antiquated to the layman, it is relatively quickly granted and the Court will make special grants to cover emergencies. Nevertheless, where an estate passes to widow, widower, and children and is valued at \$15,000 or less (or \$5,000 in other cases) a simpler "small estates" procedure is available where the Registrar of Probates or local clerk of Magistrates' Court can assist in procuring the appropriate grant.

### Conclusion

Although it is natural that persons will desire to direct the future passing of property inherited or acquired by them, the precise method of achieving such control has varied over the last twenty or thirty years. The incidence of Probate Duty and Federal Estate Duty, together with the benefits available to their estates under the Federal Income Tax Assessment Act caused many persons, especially those with substantial estates, who would have used wills to regulate succession and their property, to seek to avoid the incidence of those duties by settling property during their lifetime by way of trust.

These duties were and are payable on a sliding scale up to a substantial proportion of the estate, but over the last five years important exemptions have been granted by the Victorian Parliament to widows, widowers, children, and grandchildren under the *Probate Duty Act* 1962, and Federal Estate Duty has been entirely abolished. Whether this has led to a greater use of the will in order to regulate succession to property will only be known in future years, although it is unlikely to have discouraged the widespread use of life insurance policies and especially superannuation and pension schemes, under which the nomination of a person to receive benefits upon death has not been considered subject to the rules relating to wills and the administration of deceased estates.

**Further references:** Functions of law in a community, *Victorian Year Book* 1961, pp. 289-91; Legal system in Victoria, 1961, pp. 291-2; Criminal law and its administration in Victoria, 1963, pp. 322-30; Law of torts in Victoria, 1964, pp. 339-41; Law of contract in Victoria, 1965, pp. 318-21; Law of retail sales and hire purchase in Victoria, 1966, pp. 298-301; Law relating to export trade 1968, pp. 572-5; Commonwealth and State taxation law, 1969, pp. 590-4, and 1970, pp. 588-91; Industrial law in Victoria, 1971, pp. 568-71; Legal education, 1971, pp. 571-3; Administrative law in Victoria, 1972, pp. 561-5; Family law in Victoria, 1975, pp. 853-9; Law relating to trade practices and consumer legislation, 1976, pp. 765-7; Company law in Victoria, 1977, pp. 891-5; Victorian Constitution, 1978, pp. 759-61; Workers Compensation Legislation, 1979, pp. 691-3; Legal education in Victoria, 1980, pp. 704-8

## BIBLIOGRAPHY

**ABS publications**

- General Social Survey, Bulletin No.2 — Preliminary estimates of firearm ownership and possession (4103.0)  
 Public authority finance (5503.0)  
 Public authority finance: State and local authorities (5504.0)  
 Public authority finance: State Government: social services (5508.0)  
 Social indicators (4101.0)

**Other publications**

- ATTORNEY-GENERAL OF VICTORIA. *Law Bulletin*.  
 AUSTRALIAN INSTITUTE OF CRIMINOLOGY. *Annual Report; Information Bulletin; Newsletter; Various research reports*.  
 BATE, N. *Introduction to Legal Studies*. Sydney, Butterworths, 1975.  
 BILES, D. (editor). *Crime and Justice in Australia*. Melbourne, Sun Books, 1978.  
 CHALLINGER, D. *Young Offenders*. Melbourne, Victorian Association for the Care and Resettlement of Offenders, 1977.  
 CHAPPELL, D. and WILSON, P. *The Australian Criminal Justice System*. First edition. Sydney, Butterworths, 1972. Second edition, Sydney, Butterworths, 1977.  
 CRIMINOLOGY RESEARCH COUNCIL. *Annual report*.  
 LAW INSTITUTE OF VICTORIA. Various pamphlets on aspects of the law.  
 LEAPER, PATRICIA M. *Children in need of care and protection: a study of children brought before Victorian Children's Courts*. Melbourne, Melbourne University, Criminology Department, Melbourne, 1974.  
 KERRY L. MILTE, assisted by THOMAS A. WEBER. *Police in Australia: developments, functions, procedures*. Sydney, Butterworths, 1977.  
 VICTORIA POLICE. *Annual report; Statistical Review of Crime*.  
 VICTORIAN LAW DEPARTMENT. *Law Calendar*.  
 VICTORIAN LAW REFORM COMMISSIONER. Various reports.  
 WILSON, PAUL R. (editor). *Delinquency in Australia; a critical appraisal*. St Lucia, University of Queensland Press, 1977.