

# JUSTICE AND THE ADMINISTRATION OF LAW

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## JUDICIAL SYSTEM

### Victorian Judiciary

#### VICTORIA—SUPREME COURT AT 1 JANUARY 1976

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##### *Chief Justice*

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

##### *Puisne Judges*

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

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#### VICTORIA—JUDGES OF THE COUNTY COURT AT 1 JANUARY 1976

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##### *Chief Judge*

Desmond Patrick Whelan

##### *Judges*

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

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## Courts

### *High Court of Australia*

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

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

The number of Justices was increased from three to five in 1906 and was again increased in 1912 to seven. In 1933 the number was reduced to six and in 1946 the number of Justices was restored to seven. The Justices are all appointed for life as is required by the Constitution as it has been interpreted by the Court.

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

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

In addition, the Constitution provided that the Parliament may make laws conferring jurisdiction on the High Court in any matter arising under the Constitution or involving its interpretation, arising under any laws made by the Parliament, and in admiralty or in maritime matters. Pursuant to the last-named provision the Parliament of Australia has in section 38 of the *Judiciary Act* 1903-1969 conferred exclusive jurisdiction upon the High Court in:

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

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



The dome of the Supreme Court Library, an outstanding landmark in Melbourne, is being plated with copper as part of a \$166,000 restoration project.

*Victorian Law Department*



A feature of the Bendigo Law Courts is the native blackwood panelling of the Supreme Court. The embossed windows of the Court bear the names of some famous colonial Judges.  
*Victorian Law Department*

The main court room at Bendigo, one of the provincial centres regularly visited by Judges of the Supreme and County Courts. The Supreme Court sits in ten country towns and the County Court in seventeen locations outside Melbourne.

*Victorian Law Department*





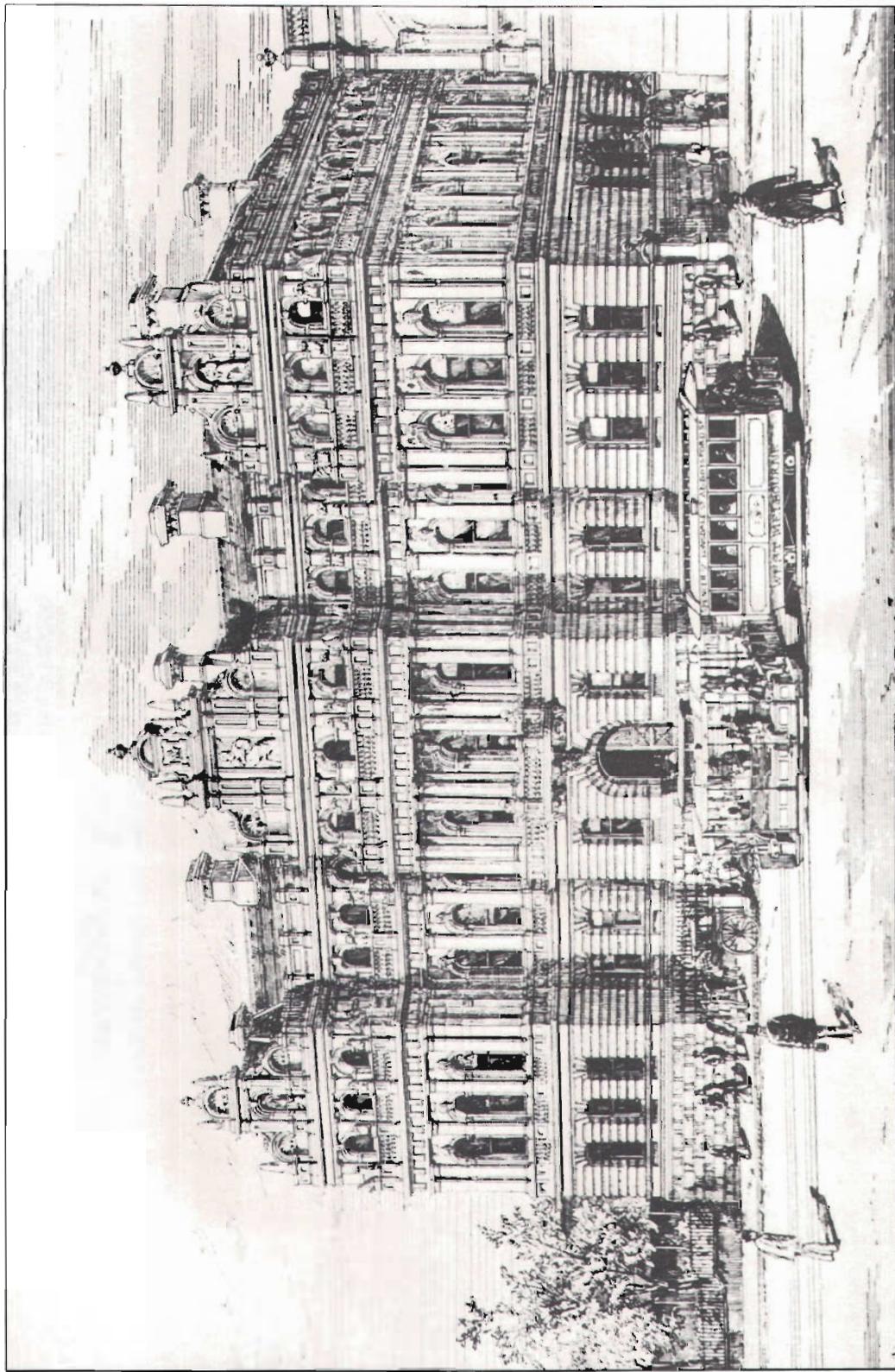
The Office of Titles, Melbourne, where more than 460,000 title transactions are completed each year.

*Victorian Law Department*



Company records at the Corporate Affairs Office, Melbourne, are now to a great extent stored on microfilm.

*Victorian Law Department*



An etching of the Crown Law Offices in Lonsdale Street, Melbourne, reproduced in the *Illustrated Australian News* of 5 January 1893. This freestone building, built at a cost of £46,420, is now being remodelled to house five additional courts and chambers for Supreme Court Judges.

*LaTrobe Collection, State Library of Victoria*

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

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

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

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

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

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

By minute dated 2 October 1903, the Governor-General ordered and declared that until the seat of government should be established or until otherwise ordered the principal seat of the High Court should be at Melbourne. In 1926 section 10 of the *Judiciary Act* was amended to provide that on and after a date to be fixed by proclamation the principal seat of the High Court should be at the seat of government and that until the date so fixed the principal seat of the High Court should be at such place as the Governor-General from time to time appointed. Since 13 August 1973, the principal seat of the High Court has been located at Sydney.

#### *Supreme Court*

The Supreme Court, as its name implies, is the supreme court of the State, having jurisdiction over all matters, civil and criminal (including probate and divorce) which have not been excluded by statute. It is established by the *Supreme Court 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

Supreme Court 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. The Court consisted in 1975 of a Chief Justice and 19 puisne judges. (Judges of the Supreme Court other than the Chief Justice are called puisne judges.)

The Full Court (usually three, and sometimes five, judges) hears and determines appeals from single judges of the Supreme Court and from the County Court, and criminal appeals from the Supreme Court and County Court. 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 at Melbourne, but judges go "on circuit" to Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Sale, Shepparton, Wangaratta, and Warrnambool. Some of these circuit towns are visited four times a year and every one of them is visited more than once.

The officers of the Court are the Masters (three in 1975), the Taxing Master, the Prothonotary, the Sheriff, and the Registrar of Probates. The Masters deal with various matters entrusted to them by Rules of Court made by the judges; are responsible for the investment of moneys ordered to be paid into court; and are Registrars in divorce. The Taxing Master fixes and settles bills of costs. The Masters and the Taxing Master must be barristers and solicitors of five years' standing, or, in the case of the Taxing Master, of equivalent experience. The Prothonotary is virtually the secretary of the Court. Writs are issued from his office, and he has the custody of documents filed therein. The Sheriff who, like the Prothonotary, is a public servant (the Masters and the Taxing Master are not under the Public Service Act) is responsible for the execution of writs, the summoning of juries, and the enforcement of judgments. There is a Deputy Prothonotary and a Deputy Sheriff at all Supreme Court circuit towns. The Clerk of Courts acts as such in each instance. The Registrar of Probates and the Assistant Registrar of Probates deal with grants of probate and administration of the estates of deceased persons in accordance with section 12 of the *Administration and Probate Act 1958*.

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

When the matter comes before the 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 Court usually provides for payment by the loser of the opponent's legal costs. Normally these are assessed by the Taxing Master. The unsuccessful party in the action has a right of appeal to the Full Court. If a successful plaintiff fails to obtain from the defendant money which the

latter has been ordered to pay, he may issue a writ of *feri facias*, addressed to the Sheriff and directing him to sell sufficient of the defendant's real and personal property to satisfy the judgment.

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

In most cases an appeal lies as of right to the High Court of Australia from decisions of the Supreme Court, but in others it can only be taken with the leave or special leave of the High Court. In some cases an appeal may be taken to the Privy Council from a decision of the Supreme Court but the leave of the Court must first be obtained. (As to appeals to the Privy Council from the High Court, see page 737.)

#### *County Court*

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

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

The Court comprises a Chief Judge (a position created in April 1975 in recognition of the increasing importance of the Court) and 26 judges. An appointee to the County Court bench must have practised as a barrister or solicitor for seven years prior to appointment and he retires at 72 years of age.

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

An indication of the distribution of work performed by County Court judges in a typical month is as follows: criminal cases, 8 judges; civil juries, 3 judges; civil causes, 3 judges; appeals, 2 judges; chambers and adoptions, 1 judge; circuit, 4 judges; Workers Compensation Board, 4 judges; and Liquor Control Commission and other tribunals, 2 judges.

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

#### *Supreme and County Court statistics*

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

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	1970	1971	1972	1973	1974
Causes entered—					
For assessment of damages	12	19	35	28	22
For trial	2,015	2,312	2,577	2,215	1,596
Number of cases listed for trial—					
By juries of six	1,246	1,219	1,327	1,596	1,280
By a Judge	527	627	725	1,042	1,066
Verdicts returned for—					
Plaintiff	186	160	151	165	163
Defendant	21	22	28	26	21
Amount awarded (\$'000)	1,495	1,161	1,118	1,612	1,630
Writs of summons issued	5,847	6,223	5,998	4,735	5,214
Other original proceedings	154	193	160	109	152
Appellate proceedings (other than criminal appeals) heard and determined—					
By Full Court	58	53	56	66	47
By a Judge	93	135	80	87	99

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

Year	Sovereign's writs against person and property	Subjects' writs against—		Total
		The person	Property	
1970	4	8	913	925
1971	1	6	1,117	1,124
1972	..	16	1,241	1,257
1973	5	13	981	999
1974	6	21	1,196	1,223

## VICTORIA—MELBOURNE COUNTY COURT BUSINESS

Particulars	1970	1971	1972	1973	1974
Summonses issued	22,183	23,854	26,102	26,402	30,517
Warrants of execution issued	7,567	7,502	7,847	7,691	8,771
Appeals from Magistrates' Courts lodged	2,727	3,068	3,543	3,448	3,498
Adoption applications filed	1,596	1,689	1,516	1,324	1,045
Civil trials heard	1,087	910	735	1,462	2,608
Criminal trials heard	1,831	1,920	2,034	2,076	1,674

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

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

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

VICTORIA—SUPREME AND COUNTY COURTS :  
AGES OF PERSONS CONVICTED

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

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

Offence (a)	1971			1972		
	Males	Females	Persons	Males	Females	Persons
Against the person—						
Murder	10	1	11	10	..	10
Attempted murder	3	..	3	1	..	1
Manslaughter	13	3	16	15	..	15
Manslaughter with motor vehicle	..	..	..	1	..	1
Culpable driving causing death	16	..	16	14	1	15
Assault with grievous bodily harm	66	1	67	71	5	76
Assault	19	..	19	33	1	34
Carnal knowledge (under 16 years)	157	..	157	170	..	170
Carnal knowledge (16 and under 18 years)	..	..	..	1	..	1
Incest	22	..	22	23	..	23
Rape	31	..	31	31	..	31
Indecent assault on female	39	..	39	43	..	43
Indecent assault on male	34	..	34	24	1	25
Unnatural offences	19	..	19	23	..	23
Bigamy	1	..	1	3	..	3
Other offences against the person	19	3	22	12	4	16
Total	449	8	457	475	12	487
Against property—						
Robbery	115	2	117	149	7	156
Breaking and entering—						
Houses	307	12	319	262	14	276
Shops	38	..	38	77	1	78
Other	47	..	47	52	..	52
Larceny (excluding motor vehicles and cattle and sheep)	137	17	154	110	11	121
Illegal use and larceny of motor vehicles	123	1	124	114	4	118
Cattle and sheep stealing	29	..	29	19	..	19
Other offences against property	73	4	77	82	6	88
Total	869	36	905	865	43	908
Fraud, forgery, and false pretences	144	20	164	142	34	176
Miscellaneous offences (b)	265	14	279	233	13	246
GRAND TOTAL	1,727	78	1,805	1,715	102	1,817

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

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

VICTORIA—SUPREME AND COUNTY COURTS : PERSONS CONVICTED  
OF SPECIFIC OFFENCES : RESULT OF HEARING, 1972

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

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

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

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

VICTORIA—SUPREME AND COUNTY COURTS : AGES OF PERSONS  
CONVICTED OF SPECIFIC OFFENCES, 1972

Offence (a)	Persons convicted—age group (years)							Total
	17 and under	18-19	20-24	25-29	30-34	35-39	40 and over	
Against the person—								
Murder	1	1	2	1	..	2	3	10
Attempted murder	..	..	1	..	..	..	..	1
Manslaughter	..	3	2	4	1	1	4	15
Manslaughter with motor vehicle	..	1	..	..	..	..	..	1
Culpable driving causing death	..	1	8	2	1	..	3	15
Assault with grievous bodily harm	1	11	17	9	21	4	13	76
Assault	..	5	13	6	3	1	6	34
Carnal knowledge (under 16 years)	2	64	83	12	2	2	5	170
Carnal knowledge (16 and under 18 years)	..	..	..	1	..	..	..	1
Incest	2	2	2	2	2	4	9	23
Rape	..	11	10	4	3	3	..	31
Indecent assault on female	1	2	9	7	6	3	15	43
Indecent assault on male	1	2	5	3	5	..	9	25
Unnatural offences	..	2	6	6	5	2	2	23
Bigamy	..	..	..	..	..	1	2	3
Other offences against the person	..	1	4	8	2	1	..	16
<b>Total</b>	<b>8</b>	<b>106</b>	<b>162</b>	<b>65</b>	<b>51</b>	<b>24</b>	<b>71</b>	<b>487</b>

VICTORIA—SUPREME AND COUNTY COURTS : AGES OF PERSONS  
CONVICTED OF SPECIFIC OFFENCES, 1972—*continued*

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 property—</b>								
Robbery	6	33	63	29	10	7	8	156
Breaking and entering—								
Houses	14	79	94	31	22	9	27	276
Shops	2	11	37	18	3	4	3	78
Other	1	11	18	13	5	..	4	52
Larceny (excluding motor vehicles and cattle and sheep)	4	9	28	27	17	13	23	121
Illegal use and larceny of motor vehicles	1	29	52	22	6	4	4	118
Cattle and sheep stealing	..	1	6	5	2	4	1	19
Other offences against property	..	13	29	16	8	11	11	88
<b>Total</b>	<b>28</b>	<b>186</b>	<b>327</b>	<b>161</b>	<b>73</b>	<b>52</b>	<b>81</b>	<b>908</b>
Fraud, forgery, and false pretences	3	7	41	39	24	13	49	176
Miscellaneous offences (b)	3	22	86	51	28	18	38	246
<b>GRAND TOTAL</b>	<b>42</b>	<b>321</b>	<b>616</b>	<b>316</b>	<b>176</b>	<b>107</b>	<b>239</b>	<b>1,817</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 sitting without justices, or in the absence of a magistrate, by two or more justices of the peace, but not exceeding five. Two or more divisions of the Court may sit simultaneously. Stipendiary magistrates are appointed from the ranks of clerks of courts. They must have passed qualifying examinations and 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 State Public Service and as such retire at the age of 65 years but are completely independent of the Executive, as are other members of the Judiciary.

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

There are approximately sixty stipendiary magistrates throughout Victoria, but a much larger number of justices, and some 44 circuits (30 in Melbourne and suburbs, and 14 in the country) over which stipendiary magistrates officiate, comprising about 208 courts which they visit periodically. A number of stipendiary magistrates are stationed in Melbourne at the Magistrates' Court. All stipendiary magistrates are appointed coroners and in districts outside the area of the City Coroner they exercise the functions of coroners and hold inquests.

In addition, three Traffic Courts have been established in the 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 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 both civil as well as criminal jurisdictions.

The civil jurisdiction comprises the ordinary jurisdiction, i.e., generally complaints for causes of action based on simple contracts up to \$200, which

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

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

There are many other matters of a civil nature vested in Magistrates' Courts by both Australian Acts (e.g., Income Tax Act) and by Victorian Acts. The Maintenance Act empowers stipendiary magistrates to hear complaints for wife and child, desertion, and to make orders for maintenance and the custody of the children. It also enables them to enforce such orders and also similar orders made in other States, and, in some instances, those made overseas.

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 Australian laws have vested Federal jurisdiction in Magistrates' Courts constituted by stipendiary magistrates and those courts so vested hear offences against Australian Acts and also conduct preliminary examinations for indictable offences against Australian 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.

In 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 larceny and kindred offences up to the value of \$1,000 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 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 County Court, and may commit him to gaol or release him on bail, or if not so satisfied, shall discharge him. Childrens' Courts (see pages 746-8) hear all offences by juveniles under seventeen years of age.

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

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

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

VICTORIA—MAGISTRATES' COURTS : CASES OF A CIVIL NATURE

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

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

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

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

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

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

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

See footnotes to preceding table.

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

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

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

NOTE. Details of the sex of offenders are not available for Magistrates' Courts summons cases.

#### *Children's Court*

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

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

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

In dealing with offences the Court follows the practice and procedure of Magistrates' Courts. However, it has considerably wider powers than Magistrates' Courts and may deal with any offence except homicide. The child (or the parent if the child is under fifteen years of age) must always consent to the Court dealing with an indictable offence in a summary manner, otherwise the matter would be tried by a jury in a higher court. Consent is given in almost all cases.

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

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

The most important method of dealing with a child is by releasing him on probation for a period not exceeding three years. Most terms of probation are for twelve months. A Probation Officer is expected to assist and guide the child during that period with reformation and rehabilitation as the goal.

If probation is not considered necessary a case may be adjourned without supervision for a specified period not exceeding two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*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 juvenile court. Police are instructed not to proceed against children who have committed minor offences, if an alternative course of action is available. Warnings are given in the presence of parents or 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.

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

VICTORIA—POLICE WARNINGS

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

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

(b) Includes grievous bodily harm.

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

VICTORIA—POLICE WARNINGS : AGE OF OFFENDER, 1972

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

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

(b) Includes grievous bodily harm.

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

*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 makes provision for the holding of an inquest where a coroner believes that a death has occurred in or near the area of his jurisdiction but 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.

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

In the majority of cases the coroner acts alone in holding an inquest, but in certain cases a jury is empanelled. This is done (a) when the coroner considers it desirable; (b) when in any specified case a law officer so directs; (c) when it is expressly provided in any Act that an inquest shall be taken with jurors; (d) when a relative of the deceased person so requests; (e) when any person knowing the circumstances leading up to the death of the deceased person or (f) any member of the police force, so requests. Amending legislation in 1953 provided that the viewing of the body is not essential and is necessary only when the coroner or jury deem it advisable.

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

Year	Number of inquests held
1970	1,551
1971	1,578
1972	1,517
1973	1,560
1974	1,305

*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
1970	28	5	33	17	..	17	(a)	(a)	(a)
1971	27	4	31	9	..	9	7	..	7
1972	26	2	28	17	..	17	15	1	16
1973	39	6	45	7	2	9	42	..	42
1974	49	2	51	11	3	14	16	..	16

(a) Not available separately in 1970.

## Legal profession

### *Introduction*

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

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

*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's professional practice course.

Most Victorian practitioners choose to specialise either as barristers or as solicitors. The Victorian Bar, an unincorporated association formed in 1900, consists of those who sign the Victorian Bar Roll after undertaking to practise exclusively as barristers. In July 1975 there were 505 members of the Bar, including eleven women, in full-time active practice. Three had chambers in Ballarat or Bendigo. Barristers appointed to the Bench remain members of the Bar.

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

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 upon 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, 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 45 Queen's Counsel practising at the Victorian Bar in July 1975.

In July 1975 six barristers' clerks each acted for 75 to 100 practising barristers. 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, four 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, Law Reform, and General 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, 40 committees doing this 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 Parliament in 1971. The relevant statutory provisions are now included as Part III of the *Legal Profession Practice Act 1958*. All persons admitted to practise as a barrister and solicitor of the Supreme Court of Victoria are eligible for membership of the Institute whether they are practising as solicitors or not.

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

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

#### **Professional committees and agencies**

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

This committee was founded in 1944 by the then Chief Justice to consider making recommendations to the Victorian Parliament for the reform of the law on matters of a non-contentious nature, including the abolition of obsolete and useless rules. Since then it has made some 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 Melbourne and Monash universities. The usual number of members is about twenty, who meet in full committee two or three times a year. Much of the work of the Committee is done by sub-committees comprising members of each branch of the 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 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 Act of 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 at Melbourne and Monash Universities, the Law Institute, and the Bar Council. The Chief Justice of Victoria is President of the Council.

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

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

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

In 1962 following the imposition of the quota system in the Law School at the University of Melbourne, the Council amended its Rules so that matriculants excluded by the quota system could attend a course comparable with that provided by the University for articled clerks but administered by the Royal Melbourne Institute of Technology. Lecturers, tutors, and examiners are appointed by the Council of Legal Education through its Legal Education Committee which prescribes the scope and content of the courses and supervises the examinations. The Council's courses have since continued to be conducted each year at the Royal Melbourne Institute of Technology.

#### *Law Reform Commissioner*

The office of Law Reform Commissioner was established by Act No. 8483 of 1973. Mr T. W. Smith, Q.C., was appointed as Commissioner on his retirement from the Supreme Court bench, his term commencing on 1 January 1974. The functions of the Commissioner are to advise the Attorney-General on the reform of the law in Victoria, including in particular:

- (1) The simplification and modernisation of the law, having regard to the needs of the community;

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

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

#### *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 he is authorised to brief a barrister when necessary. Out of pocket expenses incurred by the appointed solicitor are reimbursed in full, and accounts from solicitors and barristers are paid at the rate of 80 per cent in accordance with the Act.

#### VICTORIA—LEGAL AID COMMITTEE BUSINESS

Type of case	Number of applications		Number actually assisted	
	1973	1974	1973	1974
Divorce	3,333	4,363	2,174	2,716
Maintenance	4,111	4,565	2,481	2,921
Custody	368	421	209	274
Affiliation	463	422	316	264
Motor accident damages claims	864	1,072	472	542
Criminal (Magistrates' Courts and County-Court appeals)	1,627	2,922	997	1,984
Civil causes	2,318	2,666	817	978
Workers compensation	259	331	177	209
Probate and testators family maintenance	206	286	55	75
Others	1,168	1,410	289	465
Total	14,717	18,458	7,987	10,428

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

#### *Leo Cussen Institute for Continuing Legal Education*

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

Several experimental courses of practical training have been held, culminating in 1975 in a full-time six months legal practice course attended by 65 law

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

#### *Victoria Law Foundation*

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

The activities of the Foundation fall under the following headings: (1) promotion of legal research relating to law reform in Victoria, (2) promotion of legal education in Victoria, (3) assistance to law libraries in Victoria, and (4) improving the administration of law in Victoria. A more detailed description of the work of the Victoria Law Foundation can be found on pages 860-1 of the *Victorian Year Book 1975*.

### ADMINISTRATION OF LAW

#### Law in Victoria

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

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

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

#### *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 Government and appears for the Crown in important constitutional, criminal, and civil cases, is a practising barrister, appointed under the provisions of the Solicitor-General Act, by the Governor in Council, from among Queen's Counsel.

The administrative problems of the Law Department are the responsibility of the Secretary, who is a public servant. Included in the Department is the Crown Solicitor, who gives legal advice to government departments, and acts as solicitor for the Crown in all its cases, both criminal and civil. In the former, he is the instructing solicitor to the Prosecutors for the Queen, who appear

for the Crown in criminal matters in the Supreme and County Courts. There were eleven such Prosecutors in 1974 who, like the Solicitor-General, are not public servants, but barristers.

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

#### *Appeal Costs Board*

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

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

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

#### *Corporate Affairs Office*

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

Corporate affairs legislation commenced in Victoria with the Companies Statute of 1864. There have been continuing changes in the legislation to meet community expectations and a most recent significant amendment to the Companies Act was to give effect, as 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:

- (1) To achieve greater uniformity in the law relating to companies and the regulation of the securities industry and trading in securities;
- (2) to establish reciprocal arrangements and common standards and procedures in the administration of that law;
- (3) to co-ordinate administration and avoid unnecessary duplication for the greater convenience of the public and greater efficiency in the overall administration; and
- (4) to 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 of 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 cases.

Only criminal proceedings are reported in the County Court. Committal proceedings in Magistrates' Courts are sometimes 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 *Victorian Discharged Servicemen's Preference Act 1943*, the Board has three main functions :

- (1) It assists discharged servicemen to find employment and advises the Victorian Government on employment opportunities and incidence of unemployment among discharged servicemen ;
- (2) it is required to examine and report to the Government on alleged contraventions of the *Victorian 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 forces and employs qualified accountants for this purpose. This service is free.

#### *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 Act. The Fair Rents Board constituted for the Melbourne metropolitan area is known as the Metropolitan Fair Rents Board.

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

#### *Parliamentary Counsel's Office*

The Parliamentary Counsel's Office is a small office which originated in Victoria in 1879. The primary work of the Office is to prepare legislation for the 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 Parliament continually aims at new and more sophisticated social objectives. The Office may also be called upon to advise the Government in a wide range of constitutional and parliamentary matters.

Apart from the work done for the Government, it is the tradition in Victoria that Parliamentary Counsel should be available to assist private members of any 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 of statutory rules and for the preparation of the various tables and indices of the Acts and Statutory Rules that are published by the 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. (See also pages 114-5.)

*Patriotic Funds Council of Victoria*

The 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 780 in number with net assets exceeding \$19m and annual income and expenditure of over \$4m) are principally used to provide welfare assistance, aged persons' homes, and clubrooms, for the benefit of ex-service persons and their dependants.

The main functions of the Council are to :

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

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

*Public Solicitor*

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

Until 1 June 1970 the Office assisted persons in civil and matrimonial matters under the Poor Persons Legal Assistance Act. That Act was repealed by the *Legal Aid Act* 1969. Legal assistance is now provided by the State of Victoria through the Public Solicitor 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	Applications investigated and reports submitted	Applications not finalised	Applications approved	Applications not approved
1970	772	786	62	469	317
1971	813	827	48	535	292
1972	1,144	1,108	84	810	298
1973	1,112	1,014	98	793	221
1974	1,271	1,131	140	909	222

*Raffles Board*

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

- (1) Advise the Victorian Government on policy relating to the legislation, regulation, and administration of raffles in Victoria and to report to the

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

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

#### *Registrar-General and Registrar of Titles*

The Registrar-General registers memorials of deeds dealing with land alienated by the Crown before 2 October 1862 under the General Law, and which has not yet been converted to the Torrens System. The Registrar-General's Office is also the repository of a wide range of documents requiring registration under various Acts of 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 Government. The Registrar of Titles has registered Crown Grants of all land alienated by the Crown since 2 October 1862. He deals with conversion of General Law Titles to Torrens Titles, by issuing Certificates of Title in place of the old title deeds. He also registers transfers, mortgages, and other dealings with land under the Torrens System, in accordance with the provisions of the *Transfer of Land Act 1958*.

#### *Chief Secretary's Department—regulatory functions*

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

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

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

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

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

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

A further field of responsibility held by the Chief Secretary is the exercise of "protective" functions. These include the protection of animals, the preservation of public records, and the administration of the Metropolitan Fire Brigades, the Country Fire Authority, and the State Emergency Service.

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

#### *Crimes Compensation Tribunal*

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

A more detailed description of the work of the Crimes Compensation Tribunal can be found on pages 851-2 of the *Victorian Year Book 1975*.

#### VICTORIA—SUMMARY OF CRIMES COMPENSATION TRIBUNAL PROCEEDINGS AT 30 JUNE 1974

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

*Small Claims Tribunal*

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

Consumers are defined as persons, other than corporations, who buy or hire goods not for resale or for whom services are supplied. They may apply, on paying a small fee, to the registrar in the metropolitan area, or to the clerk of a Magistrates' Court outside that area who shall forward the application to the registrar. The registrar, who keeps all records of the Tribunals shall give notice of the application to the respondent, the trader concerned, and shall fix a date for the hearing of the claim. Lodgement of the application 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 in general allowed to appear. Hearings are in private and sworn evidence, either verbal or in writing is given, but tribunals are not bound by the rules of evidence and may inform themselves in any way they think fit. A second tribunal has been established.

**Functions of law in a community, 1961; Legal system in Victoria, 1961; Criminal law and its administration in Victoria, 1963; Law of torts in Victoria, 1964; Law of contract in Victoria, 1965; Law of retail sales and hire purchase in Victoria, 1966; Company law in Victoria, 1967; Law relating to export trade, 1968; Commonwealth and State taxation law, 1969 and 1970; Industrial law in Victoria, 1971; Administrative law in Victoria, 1972; Company law in Victoria, 1974; Family law in Victoria, 1975; Voluntary legal aid in Victoria, 1975**

*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 force in 1 July 1968. This Act incorporated a number of recommendations of the Royal Commission of Inquiry on Liquor in Victoria.

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

## VICTORIA—NUMBER OF LIQUOR LICENCES AT 30 JUNE

Type of licence	1971	1972	1973	1974	1975
Hotel	1,464	1,453	1,448	1,444	1,441
Licensed club	367	384	390	409	423
Retail bottled liquor	655	669	675	692	714
Wholesale liquor merchant	97	99	101	101	100
Australian wine	18	16	15	14	14
Canteen	1	1	2	2	2
Vigneron	15	19	21	28	39
Brewer	6	7	7	7	7
Restaurant	181	196	214	229	253
Cabaret	10	13	16	17	22
Ship	1	1	1	1	..
Theatre	1	3	3	3	5
Cider tavern	..	..	..	1	1
Residential	..	..	..	..	1
Total	2,816	2,861	2,893	2,948	3,022

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

*Racing legislation*

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

Additional legislation, relating to totalisators and the Totalizator Agency Board, is found in the *Racing (Totalizators Extension) Act 1960*. Also, the *Stamps Act 1958* contains 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—				
	1971	1972	1973	1974	1975
RACING					
Number of meetings—					
Metropolitan courses	68	69	70	68	76
Other courses	374	381	384	373	379
Number of events—					
Metropolitan courses	556	549	568	565	654
Other courses	2,666	2,612	2,795	2,779	2,775
Amount of stakes—					
Metropolitan courses (\$'000)	2,840	2,879	3,147	3,994	4,343
Other courses (\$'000)	1,617	1,688	1,967	2,338	2,615
TROTTING					
Number of meetings—					
Metropolitan courses	43	44	43	43	43
Other courses	199	202	218	218	230
Number of events—					
Metropolitan courses	323	343	337	342	343
Other courses	1,658	1,727	1,850	1,839	2,010
Amount of stakes—					
Metropolitan courses (\$'000)	728	862	895	979	1,150
Other courses (\$'000)	797	802	1,202	1,357	1,828

*Bankruptcies*

A Bankruptcy Act passed by the Australian 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 Australian Act. On 4 March 1968 the *Bankruptcy Act 1924–1965* was repealed and the *Bankruptcy Act 1966* came into operation.

## VICTORIA—BANKRUPTCIES

Year	Bankruptcies	Orders for administration of deceased debtors' estates	Arrangements with creditors without sequestrations	Total
NUMBER				
1970-71	506	6	121	633
1971-72	597	5	102	704
1972-73	447	5	107	559
1973-74	270	..	74	344
1974-75	407	1	93	501
LIABILITIES (\$'000)				
1970-71	3,758	25	2,922	6,705
1971-72	10,623	68	3,843	14,534
1972-73	4,253	29	2,231	6,513
1973-74	2,915	..	2,507	5,422
1974-75	4,862	82	5,218	10,162
ASSETS (\$'000)				
1970-71	989	42	2,129	3,160
1971-72	3,187	14	1,773	4,974
1972-73	1,258	20	1,237	2,515
1973-74	825	..	1,459	2,284
1974-75	1,430	14	2,681	4,125

## Victoria Police

The Victoria Police Force is charged with the basic responsibilities of maintaining the Queen's peace, protecting the lives and property of all citizens, and, generally, enforcing the laws of the State.

The present main functions of the police may be summarised as: (1) to maintain law and order and to protect persons and property; (2) to prevent crime; (3) to detect offenders who have committed crimes; (4) to conduct prosecutions for offences punishable by a Magistrates' Court, and to conduct proceedings in indictable matters up to the stage of committal for trial; (5) to control road traffic, prevent congestion and accidents, and investigate accidents which do occur; and (6) to assist anyone in need, particularly in times of emergency.

The requirements of the last point extend from such matters as directing a stranger to his destination to problems of such gravity as the organising and participating in search and rescue operations during times of fire, flood, and other major disasters. In these disaster-type situations the police are charged with the responsibility of guaranteeing the most favourable conditions for remedial action by experts, and to take such action as is immediately necessary pending the arrival of those experts.

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

Several interesting features of police work have been developed in recent decades. Among them have been the introduction of women police and police cadets, wireless patrols, a communications centre and mobile traffic patrols. Since the first two women were appointed as police agents in 1918, the involvement of women has gradually increased with a significant growth in numbers occurring in recent years. In 1924 the first women were sworn in as constables and by mid-1975 there were 245 women police in a total force of 6,018 serving in almost all areas of police activity.

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

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

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

In 1971 the Victorian Government received a report from Colonel Sir Eric St Johnston who had been commissioned to assess the role of the Force amid changing social and economic conditions. Arising from the report a considerable restructuring of organisation and administrative arrangements has occurred since 1971. This revamping, initially at the top administrative level, has adjusted the responsibilities of the Assistant Commissioners so that the demands upon each are more evenly distributed, and similar principles have been applied at lower levels of the Force, especially in the metropolitan area, so that the demands upon officers in charge of police districts and divisions are no longer too severe. These changes, by strengthening the command and control channels within the various districts, have improved the quality of service provided to the public.

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

To support that concept, each metropolitan police district has its own group of personnel formed into a crime car squad of 26 members. These groups provide a very effective anti-crime patrol capability, and, as the geographic areas of the metropolitan police districts are reduced, so the intensity of patrolling increases. This type of activity will eventually be expanded into the country areas.

Further support for the crime car squads is provided by independent patrol groups both in the Uniformed Operations Department and in the Traffic Department of the Force. They provide the flexibility which is so essential if saturation policing techniques are to be applied to particular trouble spots without having to diminish other areas of police resources.

Apart from the continuing problem of crime in the community, probably the greatest single concern facing the Force is the motor vehicle accident rate and the consequent road toll. With annual increases in the number of vehicle registrations and driving licences issued, the exposure of persons using streets and highways to the risk of accidental death or injury grows steadily year by year. Under these circumstances, it is the opinion of the Police Department that the impact of such legislation as the requirement to fit and wear seat belts, the influence of media road safety campaigns, and the pressure of continuing police efforts to improve driver behaviour have succeeded in containing the road toll.

To assist in containing the road toll and in improving the standards of driver behaviour encountered on the streets and highways of the State, the metropolitan group of the Mobile Traffic Section has been decentralised into four divisions,

each of which is responsible for a separate geographic area. In addition, a Mobile Task Force assists in the detection of traffic offences and special traffic groups have been created with the responsibility for patrolling the major highways of the State, upon which a disproportionate share of the traffic fatalities occur.

Many other functions of the Force are performed by specialist squads which deal with such matters as homicide, criminal investigation, company fraud, arson, and search and rescue. A forensic science laboratory provides valuable assistance in the detection of offenders in many of these areas.

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

## VICTORIA—POLICE FORCE AT 30 JUNE

Particulars	1971	1972	1973	1974	1975
Authorised strength	5,073	5,372	5,572	6,000	6,250
Actual strength (a)	4,945	5,274	5,510	5,881	6,018
C.I.B., etc. (b)	686	733	798	846	737
Police-women	109	144	163	218	245
Cadets	204	250	217	244	256
Reservists	51	53	48	53	56
Number of inhabitants per active police officer	707	672	651	618	612

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

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

**Further reference, 1975**

## LAW RELATING TO TRADE PRACTICES AND CONSUMER LEGISLATION \*

The *Trade Practices Act* 1974 is an Australian Act which affects the business and potential business operations of persons in Victoria in a way not previously attempted by legislation. It contains comprehensive provisions aimed at controlling monopolistic and anti-competitive practices, and also a broad ranging set of provisions which effectively deal with consumer protection.

A number of features of the Trade Practices Act show that the legislation is very different from any previous attempts to control and regulate the activities of business enterprises. First, unlike company law and tax law, the legislation applies to everyday commercial transactions; it influences the decisions of all levels of management; even some members of staff (e.g., purchasing officers and salesmen) need to be aware of relevant provisions. Second, it is based on a philosophy of competition and an approach to the control of business practices which in particular reverses the approach of the previous Restrictive Trade Practices Act whereby virtually anything was permissible until shown to be contrary to the public interest in the individual case; now all anti-competitive conduct is prohibited unless shown to be in the public interest in the individual case. Third, "anti-competitive" conduct is given a wide ambit to encompass not only restrictive practices which are very comprehensively specified, but also unfair and deceptive trade practices. So, for the first time, the Australian Government has enacted consumer protection legislation. Fourth, breach of the provisions of the Act can give rise to penalties ranging up to \$250,000 and six months imprisonment, and to divestiture in certain circumstances; it can also give rise to court actions initiated by individuals and corporations as well as the Attorney-General and the Trade Practices Commission. Fifth, the Act establishes a strong new agency to administer and enforce the Act, the Trade Practices Commission, to build upon the expertise of the former Office of the Commissioner of Trade Practices.

\* This article was written in 1975 and is part of a series describing major aspects of law operative in Victoria. Previous articles in this series and the *Year Book* in which they appeared are listed on page 761.

Under the Act, the Trade Practices Commission has been established, with broad powers and imposing obligations. In addition to the Commission, the Australian Industrial Court is given a vital role to play in interpreting and implementing the legislation. Herein lies a difficulty. Unless the courts can adapt themselves to handle legislation which has been cast in a very different mould from that of the past, with language of very general terms, and of the kind which courts have been unhappy with in the past, the results may be less than satisfactory for the businessman, the consumer, and the government.

The Act nevertheless has an important core which makes it relatively certain that specific restrictive trade practices are banned virtually outright, i.e., overt price fixing with respect to the supply of goods, resale price maintenance, as well as consumer protection practices, e.g., bait advertising, pyramid selling, etc.

Other practices while not banned outright have been left entirely within the ambit of the Court. The Court has had to adjudicate upon the consumer protection provisions, some of which are expressed in very general terms—for example, the Act prohibits conduct which is misleading or deceptive. There is no “defensive” action, such as pertains to certain restrictive trade practices, which may be taken by parties concerned and there has already been one decision which resulted in a significant fine (\$100,000) being imposed on a company found to have contravened sections relating to misleading advertising. On the restrictive trade practices side the practices of monopolisation and price discrimination have been left entirely in the “hands” of the court. It will be difficult to substantiate either practice, but the parties engaging in them are unable to obtain “public interest protection” as are parties to certain other types of anti-competitive conduct.

Contracts arrangements or understandings in restraint of trade and commerce are banned if they have a significant effect on competition between the parties to the contract arrangement or understanding or between them (or one of them) and other persons. There has been no attempt to delineate competition by reference to *market* in this provision and this should be contrasted to the provisions relating to exclusive dealing and mergers. There has also been no attempt to define contract in restraint of trade. Furthermore the expressions “arrangement” and “understanding” have not been defined, thus leaving a great deal of scope for the courts in dealing with situations involving price leadership, parallel behaviour, and other “practices” of the kind often associated with the oligopolistic nature of the Australian economy.

Exclusive dealings by suppliers of goods and services and mergers have also been banned but, in the case of mergers and in the case of certain kinds of supplier-imposed exclusive dealing, i.e., requirements contracts, exclusive franchises—only if the merger or practice is likely to have the effect of substantially lessening competition in a market for goods or services.

It is interesting to note a number of features of the prohibition in respect of exclusive dealing. It applies only to supplier-imposed exclusive dealing with exclusive dealing engaged in by acquirers of goods and services being subjected to the tests laid down in the provision regulating anti-competitive contracts, etc., in restraint of trade. Furthermore, tying of goods, i.e., contracts or practices whereby the person being supplied is required to acquire a third person's goods or services, is not subject to the anti-competitive test laid down for exclusive dealing in general, but is prohibited outright, unless authorised by the Commission.

The practice of exclusive dealing and mergers, which cover both the acquisition of shares or assets, and partial or total acquisitions, are only struck down if the prescribed anti-competitive test is satisfied. This is worded in terms most unlike tests which the courts in Australia have been asked to adjudicate upon previously. It will require, it seems, examination of economic

and other evidence which will in turn require lawyers to have a reasonable grasp of theories of prices and market behaviour, and the ability to converse with experts in other disciplines. Concepts of *market*, and the measuring of effects on competition are novel tasks imposed on Australia's legal profession.

The practice of exclusive dealing, mergers, and contracts arrangements and understandings in restraint of trade may be authorised by the Trade Practices Commission. An application for authorisation may be made by parties to the relevant practice or agreement prior to engaging in it or giving effect to it to the Commission. This application is made on the assumption that the particular practice or agreement is anti-competitive (or otherwise prohibited) but that the benefits which will flow from it will be public and substantial, and will on balance outweigh the anti-competitive detriment that would otherwise flow. The Commission must take into account submissions from interested parties on considering the application, and these may include submissions not only from competitors but also from other interested persons, e.g., trade unions, consumer groups, environmental lobbies, etc. The hearings to be held with respect to such applications will usually be public, and much publicity has been given to the applications for authorisation by firms in the oil, brewery, and insurance industries.

In addition to authorisations, the Act also provides for clearance of certain potentially anti-competitive conduct or agreements. This does not apply to tying practices of the kind described earlier, nor to resale price maintenance, monopolisation, or price discrimination. A clearance is a decision by the Commission that a particular practice or agreement although *prima facie* containing anti-competitive features does not breach the anti-competitive tests laid down in the Act for the relevant practice or agreement.

No appeal lies from the decision of the Commission on an application for clearance. Appeals do lie to the Trade Practices Tribunal from decisions with respect to authorisations. These include appeals by parties who have a sufficient interest in the matter; for example, it may include a trade union, or some other pressure group.

Exemptions are contained in the Act for various organisations and certain classes of practices; for example, State governments may specifically exempt certain kinds of agreements or practices from the operation of the Act. Primary product marketing organisations as specified in the regulations are exempted. Certain classes of conduct pursuant to patents, trade marks, and copyright registrations are exempted.

There are other very important features of the Act. It has been mentioned previously that penalties range up to \$250,000 for breach. While the restrictive trade practices provisions do not carry with them criminal sanctions as such, the penalty of up to \$250,000, together with individual fines of up to \$50,000 and taken with the potential for actions for damages, makes the legislation potentially quite effective. The penalties which may be obtained against individuals (and this also extends to actions in damages) may arise as a result of the individual being indirectly involved in engaging in a particular practice, such as a company director. Criminal penalties are available with respect to the consumer protection provisions. These are in many senses potentially more far reaching than the restrictive trade practices provisions.

In addition to the civil actions there is also a potential for a class action, that is, an action brought on behalf of a group of potential litigants, which has been opened up by this legislation. No actions of this kind were publicly litigated in 1975.

The legislation aims to improve competition by eradicating anti-competitive, deceptive, and misleading conduct and practices. The business and legal communities have been given an opportunity under the terms of the legislation to assist in bringing about this objective.

## AUSTRALIAN LEGAL AID OFFICE

### Establishment and functions

The establishment of the Australian Legal Aid Office incorporating the Legal Service Bureaux was announced by the Australian Government on 25 July 1973. It was to be an independent office and legislation was to be introduced to make it a statutory office. The function of the Australian Legal Aid Office would be to provide throughout Australia, in cases of need and in co-operation with community organisations, the private profession, referral services, and existing legal aid schemes, a community legal service of advice and assistance, including assistance in litigation. Its decentralised offices were to provide administrative support for community advice centres and legal or welfare groups generally.

The Australian Legal Aid Office provides a general problem solving service of legal advice for persons with an element of need. It is intended to solve the majority of problems that affect the ordinary citizen. Eligibility is determined on interview without a formal means test. Each person seeking help from the Australian Legal Aid Office is seen by a lawyer, the problem identified, advice given, and arrangements made for further assistance, if required, by the Australian Legal Aid Office or Legal Aid Committee as appropriate.

Subject to a "means and needs" test, the Australian Legal Aid Office also provides assistance, including assistance in litigation, in matters arising :

- (1) Under Australian law, including family law—to all persons ; and
- (2) under State or Australian law—to persons for whom the Australian Government has a special responsibility, for example, those in receipt of social services, Aborigines, ex-servicemen, students, and newcomers to Australia.

Assistance is provided by Australian Legal Aid Office lawyers or by referral to private legal practitioners.

Duty lawyer services (applications for bail or adjournment and simple pleas of guilty) are provided in courts of summary jurisdiction near regional offices, the Special Federal Court, Sydney, and the Family Court. Where a matter is to be defended, the client is referred to the Australian Legal Aid Office, or Legal Aid Committee, or Public Solicitor.

### Operations

The Australian Legal Aid Office operates in each State and Territory of Australia. There is a branch office in each of the capital cities. Twenty-five regional offices have been established in suburban and provincial centres and locations for a further 28 offices were approved by the Australian Government in 1975. Subject to the overall authority of the National Director, the Deputy Director in each capital city has professional and managerial responsibility for the work of all A.L.A.O. offices in his State or Territory.

The A.L.A.O. employs some 150 lawyers and 220 supporting administrative staff. It is A.L.A.O. policy that all lawyers in the A.L.A.O. hold a current practising certificate issued by the relevant professional body. Most of the A.L.A.O.'s lawyers are drawn from the private profession. Since its inception the A.L.A.O. has given advice and assistance to over 200,000 people, with interviews at present totalling approximately 15,000 per month. During 1975, in excess of 140,000 interviews were conducted.

The revised financial estimates for 1975-76 provided \$14.3m for legal aid, including \$3.0m for Aboriginal legal aid services and \$1.0m for grants to supplement legal aid services in the States. The allocation for the Australian Legal Aid Office was \$10.3m, of which \$5.0m was for payment by the A.L.A.O. to private practitioners.

Section 117 of the Family Law Act makes provision for the Australian Legal Aid Office to assist persons involved in proceedings under that Act in accordance with the "means and needs" test of the A.L.A.O.



Auguste and Antonin Daum French  
Vase Glass, early 20th century  
(h. 12 cm)  
Purchased 1975  
*National Gallery of Victoria*



Dale Hickey (b. 1937) Australian  
Still Life Study, oil on canvas 1975  
(h. 25.4 cm, w. 26.5 cm)  
Purchased 1975  
*National Gallery of Victoria*



Edvard Munch (1863–1944) Norwegian  
To The Forest, colour woodcut 1915  
(h. 51 cm, w. 64.6 cm)  
Felton Bequest 1974

*National Gallery of Victoria*



South Indian  
Mahakali Bronze, 12th century  
(Chola Period) (h. 58 cm)  
Felton Bequest 1975

*National Gallery of Victoria*

In environmental cases involving the national interest, the Australian Legal Aid Office provides legal assistance to conservation groups. Among the matters taken into account in deciding upon the provision of assistance is self-help by the conservation group, for example, by raising money through public subscriptions.

A.L.A.O. regional offices are small "store-front" legal offices, usually staffed by two lawyers and two support staff, which rely to a large extent upon local private practitioners to whom a substantial volume of work is referred. They work closely with local community and welfare organisations. The offices provide duty lawyer services at local Magistrates' Courts. Visiting services to outlying centres operate from a number of regional offices.

### *Victoria*

The Australian Legal Aid Office has offices in central Melbourne, Brunswick, Sunshine, Broadmeadows, and Geelong. Approvals were announced by the Australian Government for offices at Bendigo, Ballarat, Footscray, Prahran, Preston, Shepparton, Springvale, Ringwood, and Morwell in 1975. Premises have been acquired at Bendigo, Shepparton, Ballarat, and Morwell, but except for a solicitor for each of Ballarat and Bendigo, no staff have been appointed. One solicitor has also been appointed for Springvale.

The solicitors appointed to Bendigo, Ballarat, and Springvale have been temporarily transferred to the Melbourne Branch Office, raising its legal staff to seventeen in number. Two solicitors are employed at Brunswick and one solicitor at Broadmeadows, Geelong, and Sunshine, making a total of twenty-two solicitors employed in Victoria.

Personal interviews are being conducted at the rate of about 1,700 per month. About a third of inquiries concern family law matters, but this proportion has markedly increased with the coming into effect of the Family Law Act. The balance of interviews is fairly evenly distributed between petty sessions criminal matters, landlord and tenant and credit problems, and inquiries about property and negligence claims.

Referrals to the private profession average about 800 per month, for which the commitment is approximately \$280,000. About two thirds of referrals are in family law matters, with most of the balance being for assistance in police prosecutions.

In April 1975, arrangements between the Legal Aid Committee of Victoria and the Australian Legal Aid Office were formalised in discussions between the interested parties. The agreement was that the Australian Legal Aid Office would assist persons :

(1) In all proceedings arising out of the Matrimonial Causes Act or other Australian legislation ; or

(2) who are in receipt of social service benefits (including unemployment benefits), students, newcomers to Australia, and ex-servicemen.

The Legal Aid Committee would give aid to applicants (except those falling within the second of the above categories) in the following :

(1) Matrimonial matters arising under State law (this is of very limited importance now, having regard to the Family Law Act) ;

(2) criminal matters under State law in Magistrates' Courts and the appellate jurisdiction of the County Court ; and

(3) civil proceedings under State law in all jurisdictions.

It was further agreed that persons who attended at the "wrong" office should be assisted to complete the appropriate form and send it on by mail to the appropriate body. In urgent matters the applicant would be referred in person to the correct source of assistance. Application forms would be marked where a referral occurs to render it identifiable. Where the inquiry is by telephone it was agreed that attempts should be made to identify the appropriate source of aid

from the information provided by the inquirer and he should be given the appropriate telephone number to ring for an appointment.

In the Melbourne Branch Office an average of 234 interviews are conducted weekly. Approximately 8,500 have been referred to private practitioners on a legal aid basis and some 4,500 briefs have been delivered to Counsel in respect of those matters.

The Australian Legal Aid Office has been effective in dispensing legal advice and assistance to the community in its period of operation. The degree of acceptance by the public and the private profession has been greater than expected. The A.L.A.O. dovetails in with existing legal aid agencies and does not in any sense compete with those bodies.

#### **Criteria for assistance**

The criteria for the provision of 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 A.L.A.O. In considering merit, all the circumstances are examined, particularly 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 not to result in a proper and just advantage to the applicant.

#### *Means and needs test*

The “means and needs” test for eligibility for assistance from the Australian Legal Aid Office is the inability of the applicant to afford the cost of representation in the particular case. The following guidelines provide a general standard for measuring “inability” but they are applied with discretion in the individual case. Where proceedings are costly, there is a greater need to keep in mind the basic test. Approval of assistance is reconsidered when there is a change in financial circumstances.

An applicant comes within the guidelines if neither his disposable weekly income nor his assets exceed the amounts set out below :

(1) Disposable weekly income. The income guidelines are : applicant without dependant—\$40 per week, for one dependant—add \$15 per week, and for each additional dependant—add \$10 per week. The disposable weekly income of the applicant is calculated by deducting from gross weekly income the following items, calculated on a weekly basis : income tax, superannuation contributions, one half of any board paid by applicant, rent or mortgage payments for dwelling house in which applicant resides, municipal rates and water rates for dwelling house in which applicant resides, maintenance payments to spouse and children of applicant, and payments under hire purchase agreements and credit sales contracts for household goods and furniture used by applicant in his home.

(2) Assets. The asset guidelines are : estimated cost of proceedings less than \$300—\$500; estimated cost of proceedings \$300 or more—\$1,000; for each dependant—add \$400. Assets include money that is immediately available such as bank, building society, and credit union deposits, or that can readily be obtained, for example, by loan, or by selling a marketable asset or converting negotiable securities such as shares and debentures. Assets do not include wearing apparel, tools of trade, household furniture, or interest in a dwelling house in which the applicant resides, unless the value is unusually high. In the case of a married applicant, the combined incomes and assets of both husband and wife are taken into account, provided that they are living together. Ordinarily, couples living together in a de facto relationship are regarded as husband and wife. In simple cases of dissolution of marriage, where there are no children under the age of eighteen years for whom provision needs to be made, an applicant, in addition to satisfying the preceding requirements, must establish special hardship.

*Contributions*

Normally a contribution of \$50—\$200 is required, but this may be waived in whole or in part in an individual case where an applicant, having regard to all the circumstances, is unable to afford it. A contribution outside the range of \$50—\$200 may be required in appropriate cases, but a contribution of less than \$25 is not required.

A contribution may be imposed or increased having regard to the outcome of the proceedings. A person who could not originally afford to bring proceedings may well be in a different position after settlement of a dispute relating to property or a claim for damages.

The contribution is paid by the legally assisted person to the private practitioner at the time he is taking instructions and, in any event, no later than at the time the case is set down for hearing. Contributions are paid in a lump sum or, at most, by two payments and retained by the private practitioner as part of his fee.

**BIBLIOGRAPHY****Central Office**

- 5.33 Public authority finance
- 5.43 Public authority finance : State and local authorities