

Version No. 120
Evidence Act 1958

Act No. 6246/1958

Version incorporating amendments as at 1 September 1998

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Version No. 120
Evidence Act 1958

Act No. 6246/1958

Version incorporating amendments as at 1 September 1998

An Act to consolidate the Law of Evidence.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

S. 1
amended by
Nos 7324 s. 2,
7366 s. 2(a)–
(c), 8003
s. 2(2), 8139
s. 2, 8190
s. 2(2), 8228
s. 7(a)–(c),
8327 s. 2(a),
10074 ss 4(2),
11(3)(a),
57/1989
s. 3(Sch.
item 67.1).

1. *Short title and commencement*

This Act may be cited as the **Evidence Act 1958**, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

S. 2
repealed by
No. 12/1993
s. 6(a).

* * * * *

S. 3
substituted by
No. 8228
s. 2(1).

3. *Definitions*

(1) In this Act unless inconsistent with the context or subject-matter—

"business" includes public administration and any business profession occupation calling trade or undertaking whether engaged in or

carried on by the Crown, or by a statutory authority, or by any other person, whether or not it is engaged in or carried on for profit;

"court" in relation to any legal proceeding, includes a person acting judicially;

"criminal proceedings" means any proceedings for or with respect to the committal for trial of any person for an indictable offence or the trial of any person for a summary or indictable offence;

"document" includes, in addition to a document in writing—

U.K. 1965
s. 4(1), U.K.
1968 s. 10(1),
N.Z. s. 2(c).

- (a) any book map plan graph or drawing;
 - (b) any photograph;
 - (c) any label marking or other writing which identifies or describes any thing of which it forms part, or to which it is attached by any means whatsoever;
 - (d) any disc tape sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
 - (e) any film negative tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom; and
 - (f) anything whatsoever on which is marked any words figures letters or symbols which are capable of carrying a definite meaning to persons conversant with them;
-

U.K. 1968
s. 10(1).
S. 3(1) def. of
"film"
amended by
No. 10231 s. 4.

"film" includes a microfilm and a microfiche;

S. 3(1) def. of
"impaired"
inserted by
No. 8/1991
s. 7(a).

"impaired", in relation to mental functioning,
includes impaired because of mental illness,
intellectual disability, dementia or brain
injury;

"legal proceeding" includes any civil criminal or
mixed proceeding and any inquiry in which
evidence is or may be given before any court
or person acting judicially;

S. 3(1) def. of
"person
acting
judicially"
amended by
No. 57/1989
s. 3(Sch. item
67.2).

"person acting judicially" includes any court
judge arbitrator master and any person or
body having by law or by consent of parties
authority to hear receive and examine
evidence and any officer in any public
department having in the discharge of his
duties authority to examine evidence;

S. 3(1) def. of
"sexual
offence"
inserted by
No. 8/1991
s. 7(b).

"sexual offence" means an offence under
Subdivision (8A), (8B), (8C), (8D) or (8E) of
Division 1 of Part I of the **Crimes Act 1958**
or under any corresponding previous
enactment or an attempt to commit any such
offence or an assault with intent to commit
any such offence;

U.K. 1968
s. 10(2).

"statement" includes any representation of fact
whether made in words or otherwise.

- (2) In this Act any reference to a copy of a document
includes—
- (a) in the case of a document falling within
paragraph (d) but not paragraph (e) of the
definition of "document" in sub-section (1), a

transcript of the sounds or other data embodied therein;

- (b) in the case of a document falling within paragraph (e) but not paragraph (d) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;
- (c) in the case of a document falling within both those paragraphs, such a transcript together with such a reproduction or still reproduction; and
- (d) in the case of a document not falling within the said paragraph (e) of which a visual image is embodied in a document falling within that paragraph, a reproduction or still reproduction of that image, whether enlarged or not—

and any reference to a copy of the material part of a document shall be construed accordingly.

**U.K. 1968
s. 10(2).**

PART I—THE MEANS OF OBTAINING EVIDENCE

No. 3674
ss 4–9.
Pt 1 Div. 1
(Heading and
ss 4–9)
amended by
Nos 7840
s. 20(a),
110/1986
s. 140(2),
57/1989
s. 3(Sch. item
67.3),
substituted as
Pt 1 Div. 1
(Heading and
ss 4–6) by
No. 57/1990
s. 4.
S. 4
substituted by
No. 57/1990
s. 4.

Division 1—Orders and Commissions to Examine Witnesses

4. *Order to examine witnesses*

- (1) The Supreme Court, in its discretion and where it appears in the interests of justice to do so, on the application of a party to a civil or criminal proceeding before the Supreme Court or County Court, may make, in relation to a person in Victoria, an order for the issue of a commission for the examination of the person on oath or affirmation at any place in Victoria.
- (2) In determining whether it is in the interests of justice to make an order under sub-section (1) in relation to the taking of evidence of a person, the matters to which the court must have regard include the following—
 - (a) whether the person will be able to give evidence material to any issue to be tried in the proceeding;
 - (b) whether, having regard to the interests of other parties to the proceeding, justice will

be better served by granting or refusing the order.

- (3) If the Supreme Court makes an order under sub-section (1) the Supreme Court, in its discretion, at the time of the making of the order or at a subsequent time, may give such directions as it thinks just relating to the procedure to be followed in and in relation to the examination, including directions as to the time, place and manner of the examination, and to any other matter that the Supreme Court thinks relevant.
- (4) Subject to sub-section (5), the Supreme Court or the County Court may, on such terms, if any, as it thinks fit, permit a party to the proceeding to tender as evidence in the proceeding the evidence of a person taken in any examination held as a result of an order made under sub-section (1) or a record of that evidence.
- (5) Evidence of a person so tendered is not admissible if—
 - (a) it appears to the satisfaction of the Supreme Court or County Court at the hearing of the proceeding that the person is able to attend the hearing; or
 - (b) the evidence would not have been admissible had it been given or produced at the hearing of the proceeding.
- (6) If it is in the interests of justice to do so, the Supreme Court or County Court may, in its discretion, exclude from the proceeding evidence taken in an examination held as a result of an order made under sub-section (1), whether or not it is otherwise admissible.
- (7) In this section, a reference to evidence taken in an examination includes a reference to—

s. 5

- (a) a document produced at the examination;
and
- (b) answers made, whether in writing, or orally
and reduced to writing, to any written
interrogatories presented at the examination.

S. 5
substituted by
No. 57/1990
s. 4.

5. Exclusion of evidence in criminal proceeding

This Division does not affect the power of a court
in a criminal proceeding to exclude evidence that
has been obtained illegally or, if admitted, would
operate unfairly against the defendant.

S. 6
substituted by
No. 57/1990
s. 4.

6. Operation of other laws

This Division is not intended to exclude or limit
the operation of any other law, or of any rule or
regulation made under, or in pursuance of, such a
law, that makes provision for the examination of
witnesses for the purpose of a proceeding in
Victoria.

Ss 7-9
repealed by
No. 57/1990
s. 4.

* * * * *

Pt 1 Div. 1A
(Heading and
ss 9A-9J)
inserted by
No. 8327
s. 2(b),
amended by
No. 57/1989
s. 3(Sch.
items 67.4,
67.5),
substituted as
Pt 1 Div. 1A
(Heading and
ss 9A-9K) by
No. 57/1990
s. 5.

Division 1A—Examination of Witnesses Abroad

S. 9A
substituted by
No. 57/1990
s. 5.

9A. Definitions

In this Division—

"Australia" includes the Territories of the Commonwealth (whether internal or external) for the government of which as a Territory provision is made by any Commonwealth Act;

"examination" includes any proceeding for the taking of evidence of a person conducted by the judicial authorities of a foreign country in relation to a letter of request issued as a result of an order made by a court under this Division;

"inferior court" means a court of the State, except when exercising federal jurisdiction, not being a superior court;

"superior court" means the Supreme Court or County Court, except when exercising federal jurisdiction.

9B. *Proceedings in superior courts*

- (1) In any civil or criminal proceeding before a superior court, the court may, in its discretion and where it appears in the interests of justice to do so, on the application of a party to the proceeding, make, in relation to a person outside Australia, an order—
 - (a) for the examination of the person on oath or affirmation at any place outside Australia before a judge of the court, an officer of the court or such other person as the court may appoint; or
 - (b) for the issue of a commission for the examination of the person on oath or affirmation at any place outside Australia; or
 - (c) for the issue of a letter of request to the judicial authorities of a foreign country to

S. 9B
substituted by
No. 57/1990
s. 5.

take, or to cause to be taken, the evidence of the person.

- (2) In determining whether it is in the interests of justice to make an order under sub-section (1) in relation to the taking of evidence of a person, the matters to which the court must have regard include the following—
- (a) whether the person is willing or able to come to Victoria to give evidence in the proceeding;
 - (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding;
 - (c) whether, having regard to the interests of other parties to the proceeding, justice will be better served by granting or refusing the order.
- (3) If a court makes an order under sub-section (1) of the kind referred to in sub-section (1)(a) or (b), the court, in its discretion, at the time of the making of the order or at a subsequent time, may give such directions as it thinks just relating to the procedure to be followed in and in relation to the examination, including directions as to the time, place and manner of the examination, and to any other matter that the court thinks relevant.
- (4) If a court makes, in relation to a proceeding, an order under sub-section (1) of the kind referred to in sub-section (1)(c) in relation to the taking of evidence of a person, the court may, in its discretion, include in the order a request as to any matter relating to the taking of that evidence, including any of the following matters—
- (a) the examination, cross-examination or re-examination of the person, whether the
-

-
- evidence of the person is given orally, upon affidavit or otherwise;
- (b) the attendance of the legal representative of each party to the proceeding and the participation of those persons in the examination in appropriate circumstances;
 - (c) any prescribed matter.
- (5) Subject to sub-section (6), the court may, on such terms, if any, as it thinks fit, permit a party to the proceeding to tender as evidence in the proceeding the evidence of a person taken in any examination held as a result of an order made under sub-section (1) or a record of that evidence.
- (6) Evidence of a person so tendered is not admissible if—
- (a) it appears to the satisfaction of the court at the hearing of the proceeding that the person is in Victoria and is able to attend the hearing; or
 - (b) the evidence would not have been admissible had it been given or produced at the hearing of the proceeding.
- (7) If it is in the interests of justice to do so, the court may, in its discretion, exclude from the proceeding evidence taken in an examination held as a result of an order made under sub-section (1), whether or not it is otherwise admissible.
- (8) In this section, a reference to evidence taken in an examination includes a reference to—
- (a) a document produced at the examination; and
 - (b) answers made, whether in writing, or orally and reduced to writing, to any written interrogatories presented at the examination.
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S. 9C
substituted by
No. 57/1990
s. 5.

9C. Proceedings in inferior courts

- (1) The Supreme Court may, in its discretion, on the application of a party to a civil or criminal proceeding before an inferior court exercise the same power to make an order of the kind referred to in section 9B(1) for the purpose of that proceeding as the Supreme Court has under that sub-section for the purpose of a proceeding in the Supreme Court.
- (2) Sub-sections (5), (6) and (7) of section 9B apply in relation to evidence taken in an examination held as a result of an order made by a court by virtue of this section in relation to an inferior court as if—
 - (a) in sub-sections (5), (6) and (7)—
 - (i) a reference to the proceeding were a reference to the proceeding in the inferior court; and
 - (ii) a reference to the court were a reference to the inferior court; and
 - (b) in sub-sections (5) and (7), a reference to an order made under sub-section (1) were a reference to an order made by a court by virtue of this section.

S. 9D
substituted by
No. 57/1990
s. 5.

9D. Exclusion of evidence in criminal proceeding

This Division does not affect the power of a court in a criminal proceeding to exclude evidence that has been obtained illegally or would, if admitted, operate unfairly against the defendant.

S. 9E
substituted by
No. 57/1990
s. 5.

9E. Operation of other laws

This Division is not intended to exclude or limit the operation of any law of the State, or of any rule or regulation made under, or in pursuance of,

such a law, that makes provision for the examination of witnesses outside Australia for the purpose of a proceeding in the State.

Division 1B—Examination of witnesses outside the State but within Australia

Pt 1 Div. 1B
(Heading)
inserted by
No. 57/1990
s. 5.

9F. *Application of Division*

This Division does not apply to an examination outside Australia, and references in this Division to persons, acts, matters or things outside the State shall be read as excluding those outside Australia.

S. 9F
substituted by
No. 57/1990
s. 5.

9G. *Definitions*

In this Division—

"Australia" includes the Territories of the Commonwealth (whether internal or external) for the government of which as a Territory provision is made by any Commonwealth Act;

"examination" includes any proceeding for the taking of evidence of a person conducted by the judicial authorities of a foreign country in relation to a letter of request issued as a result of an order made by a court under this Division;

"inferior court" means a court of the State, except when exercising federal jurisdiction, not being a superior court;

"judicial authority", in relation to a place outside the State, means a court or person prescribed as an appropriate judicial authority for that place;

S. 9G
substituted by
No. 57/1990
s. 5.

"superior court" means the Supreme Court or County Court, except when exercising federal jurisdiction.

S. 9H
substituted by
No. 57/1990
s. 5.

9H. Proceedings in superior courts

- (1) In any civil or criminal proceedings before a superior court, the court may, in its discretion and where it appears in the interests of justice to do so, make, in relation to a person outside the State, an order—
 - (a) for the examination of the person on oath or affirmation at any place outside the State before a judge of the court, an officer of the court or such other person as the court may appoint; or
 - (b) for the issue of a commission for the examination of the person on oath or affirmation at any place outside the State; or
 - (c) for the issue of a letter of request to the judicial authorities of a place outside the State to take, or to cause to be taken, the evidence of the person.
- (2) In determining whether it is in the interests of justice to make an order under sub-section (1) in relation to the taking of evidence of a person, the matters to which the court shall have regard include the following—
 - (a) whether the person is willing or able to come to Victoria to give evidence in the proceeding;
 - (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding;
 - (c) whether, having regard to the interests of the parties to the proceeding, justice will be

better served by granting or refusing the order.

- (3) If a court makes an order under sub-section (1) of the kind referred to in sub-section (1)(a) or (b), the court, in its discretion, at the time of the making of the order or at a subsequent time, may give such directions as it thinks just relating to the procedure to be followed in and in relation to the examination, including directions as to the time, place and manner of the examination, and to any other matter that the court thinks relevant.
- (4) If a court makes, in relation to a proceeding, an order under sub-section (1) of the kind referred to in sub-section (1)(c) in relation to the taking of evidence of a person, the court may, in its discretion, include in the order a request as to any matter relating to the taking of that evidence, including any of the following matters—
 - (a) the examination, cross-examination or re-examination of the person, whether the evidence of the person is given orally, upon affidavit or otherwise;
 - (b) the attendance of the legal representative of each party to the proceeding and the participation of those persons in the examination in appropriate circumstances;
 - (c) any prescribed matter.
- (5) Subject to sub-section (6), the court may, on such terms, if any, as it thinks fit, permit a party to the proceeding to tender as evidence in the proceeding the evidence of a person taken in an examination held as a result of an order made under sub-section (1) or a record of that evidence.
- (6) Evidence of a person so tendered is not admissible if—

- (a) it appears to the satisfaction of the court at the hearing of the proceeding that the person is in Victoria and is able to attend the hearing; or
 - (b) the evidence would not have been admissible had it been given or produced at the hearing of the proceeding.
- (7) If it is in the interests of justice to do so, the court may, in its discretion, exclude from the proceeding evidence taken in an examination held as a result of an order made in sub-section (1) whether or not it is otherwise admissible.
- (8) In this section a reference to evidence taken in an examination includes a reference to—
- (a) a document produced at the examination; and
 - (b) answers made, whether in writing, or orally and reduced to writing, to any written interrogatories presented at the examination.

S. 9I
substituted by
No. 57/1990
s. 5.

9I. *Proceedings in inferior courts*

- (1) The Supreme Court may, in its discretion, on the application of a party to a civil or criminal proceeding before an inferior court, exercise the same power to make an order of the kind referred to in section 9H(1) for the purpose of that proceeding as the Supreme Court has under that sub-section for the purpose of a proceeding in the Supreme Court.
- (2) Sub-sections (5), (6) and (7) of section 9H apply in relation to evidence taken in an examination held as a result of an order made by a court by virtue of this section in relation to an inferior court as if—
- (a) in sub-sections (5), (6) and (7)—
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- (i) a reference to the proceeding were a reference to the proceeding in the inferior court; and
- (ii) a reference to the court were a reference to the inferior court; and
- (b) in sub-sections (5) and (7), a reference to an order made under sub-section (1) were a reference to an order made by a court by virtue of this section.

9J. *Exclusion of evidence in criminal proceedings*

This Division does not affect the power of a court in a criminal proceeding to exclude evidence that has been obtained illegally or would, if admitted, operate unfairly against the defendant.

S. 9J
substituted by
No. 57/1990
s. 5.

9K. *Operation of other laws*

This Division is not intended to exclude or limit the operation of any other law of the State, or of any rule or regulation made under, or in pursuance of such a law, that makes provision for the examination of witnesses outside the State for the purpose of a proceeding in the State.

S. 9K
inserted by
No. 57/1990
s. 5.

Division 1C—Taking of Evidence for Foreign and Australian Courts¹

Pt 1 Div. 1C
(Heading and
ss 9L–9Q)
inserted by
No. 57/1990
s. 6.

9L. *Definitions*

In this Division—

"Australia" includes the Territories of the Commonwealth (whether internal or external) for the government of which as a Territory provision is made by any Commonwealth Act;

"proceedings" means—

S. 9L
inserted by
No. 57/1990
s. 6.

- (a) proceedings in any civil or commercial matter; or
- (b) proceedings in or before a court in relation to the commission of an offence or an alleged offence;

"property" includes any land, chattel or other corporeal property of any description;

"request" includes any commission, order or other process issued by or on behalf of a requesting court;

"requesting court" means a court or tribunal by or on whose behalf a request is issued, as referred to in section 9M.

S. 9M
inserted by
No. 57/1990
s. 6.

9M. *Application to the Supreme Court for assistance in obtaining evidence for proceedings in other court*

- (1) If an application is made to the Supreme Court for an order for evidence to be obtained in Victoria and the Supreme Court is satisfied—
 - (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction in a place outside Victoria; and
 - (b) that the evidence to which the application relates is to be obtained for the purposes of proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated—

the following provisions of this Part apply.

- (2) This Part does not apply in respect of proceedings relating to the commission of an offence or an alleged offence unless the requesting court is a court of a place in Australia or of New Zealand.

9N. *Power of the Supreme Court to give effect to application for assistance*

S. 9N
inserted by
No. 57/1990
s. 6.

- (1) The Supreme Court has power, on any such application as is mentioned in section 9M, by order to make such provision for obtaining evidence in Victoria as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made.
- (2) An order under this section may require a specified person to take such steps as the court may consider appropriate for that purpose.
- (3) Without limiting the generality of sub-sections (1) and (2), an order under this section may, in particular, make provision—
 - (a) for the examination of witnesses, either orally or in writing;
 - (b) for the production of documents;
 - (c) for the inspection, photographing, preservation, custody or detention of any property;
 - (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
 - (e) for the medical examination of any person;
 - (f) without limiting paragraph (e), for the taking and testing of samples of blood from any person.
- (4) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of proceedings in the Supreme Court (whether or not

proceedings of the same description as those to which the application for the order relates).

- (5) Sub-section (4) does not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.
- (6) An order under this section shall not require a person—
- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in the person's possession, custody or power; or
 - (b) to produce any documents other than particular documents specified in the order and appearing to the court making the order to be, or to be likely to be, in the person's possession, custody or power.
- (7) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time on attendance as a witness in proceedings before the Supreme Court.

S. 90
inserted by
No. 57/1990
s. 6.

90. *Privilege of witnesses*

- (1) A person shall not be compelled by virtue of an order under section 9N to give any evidence which the person could not be compelled to give—
- (a) in similar proceedings in Victoria; or
 - (b) in similar proceedings in the place in which the requesting court exercises jurisdiction.
- (2) Sub-section (1)(b) does not apply unless the claim of the person in question to be exempt from giving evidence is either—
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- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
 - (b) conceded by the applicant for the order.
- (3) Where such a claim by any person is not so supported or conceded, the person may (subject to the other provisions of this section) be required to give the evidence to which the claim relates, but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.
- (4) In this section, references to giving evidence include references to answering any question and to producing any document, and the reference in sub-section (3) to the transmission of evidence given by a person shall be construed accordingly.

9P. *Offence*

If any person, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 9N, makes a statement—

- (a) which the person knows to be false in a material particular; or
- (b) which is false in a material particular and which the person does not believe to be true—

the person is guilty of an offence.

Penalty: imprisonment for 5 years.

9Q. *Operation of other laws*

This Part is not intended to exclude or limit the operation of any other law of the State that makes provision for the taking of evidence in the State for the purpose of a proceeding outside the State.

S. 9P
inserted by
No. 57/1990
s. 6.

S 9Q
inserted by
No. 57/1990
s. 6.

**Division 2—Subpoenas etc. and Examination Without
Subpoena**

No. 3674 s. 10.
S. 10
amended by
Nos 57/1989
s. 3(Sch. item
67.6), 64/1990
s. 17.

10. *Subpoena and summonses to witnesses*

It shall not be necessary to issue a separate writ of subpoena ad testificandum or a separate summons for every four witnesses, and any number of witnesses may hereafter be inserted in any such writ or summons for the same party in the same matter.

No. 3674 s. 11.

11. *Persons present may be examined without a subpoena*

On the trial of any issue joined or of any matter or question or on an inquiry arising in any suit action or proceeding in any court or before any person having by law or by consent of parties authority to hear receive and examine evidence, any person who happens to be present and who is competent to give evidence may be called and required to give evidence or to produce any document or to give evidence and produce any document; and if any such person when called and required as aforesaid does not appear and give evidence or (if then able so to do) produce the document, he shall except where other provision is expressly made be subject to the same proceedings and liabilities as if he had been duly served with a writ of subpoena ad testificandum or duces tecum or a summons or other process, and had received his conduct money and payment for expenses and loss of time.

Division 3—Prisoners

12. *Prisoner may be brought before court to give evidence without writ of habeas corpus*

No. 3674 s. 12.
S. 12
amended by
Nos 6651
s. 58(a)(b),
7705 s. 10,
10257 s. 84(a),
16/1986 s. 30,
110/1986
s. 140(2),
57/1989
s. 3(Sch. item
67.7), 4/1997
s. 4(1).

Any person in custody in any gaol police gaol prison penal establishment youth training centre or remand centre for any cause or in the custody of the sheriff his deputy or any of his officers for any cause may upon an order in writing (in the form or to the effect in the Second Schedule) made as hereinafter provided be brought before, or be brought to another place specified in the order where facilities exist to enable the person (by audio or audio visual link within the meaning of Part IIA) to appear before, ² any court judge or person acting judicially or person authorized to take the examination of witnesses under Division one of this Part to give evidence in or upon any legal proceedings without a writ of habeas corpus; and every such person shall be deemed to be in the legal custody of the gaoler or other officer having the temporary custody of such person and acting under such order, and such officer shall in due course return such person into the custody from which he was brought.

Where such proceedings are to take place before any court of which there is a judge appointed and commonly known by that name then such order shall be made by a judge of such court.

Where such proceedings are to take place before the County Court then such order shall be made by a judge thereof.

Where such proceedings are to take place before a special referee arbitrator or umpire or before any person authorized under Division one of this Part to take any examination within Victoria such order shall be made by the Supreme Court.

In all other cases such order shall be made by the Supreme Court or a magistrate.

Nothing in this section shall limit the effect of the provisions of the **Coroners Act 1985** relating to the attendance of prisoners at inquests.

Division 4—Inspection of Property

No. 3674 s. 13.
S. 13
amended by
No. 7840
s. 20(b),
substituted by
No. 110/1986
s. 140(2).

13. *Party may be ordered to allow inspection of realty or personalty*

Either party to a proceeding pending in the Supreme Court or the County Court shall be at liberty to apply to the Court for an order for the inspection, by himself or by any of his witnesses, of any real or personal property the inspection of which may be material to the proper determination of the question in dispute; and the Court may make an order upon such terms as to costs and otherwise as the Court may direct.

Division 5—Boards Appointed and Commissions Issued by the Governor in Council

No. 3674 s. 14.
S. 14
amended by
No. 7933
s. 2(a).

14. *Power to send for persons and papers*

It shall be lawful for any board appointed or to be appointed by the Governor in Council to summon by writing under the hand of the chairman or sole member thereof (as the case may be) any person whose evidence in the judgment of the said board or of any member thereof is material to the subject-matter of inquiry to be made by such board to attend the said board at such place and at such reasonable time from the date of such summons as is therein specified; and such person may be required by such summons to bring before such board any documents in his custody possession or control material to the subject-matter of inquiry. Such summons may be served

either by delivering the same to the person required to attend or by leaving the same at his usual place of abode.

15. *Power of member of board to examine upon oath*³

No. 3674 s. 15.

Any member of the board may administer an oath to and may examine upon oath any person so summoned or who happens to be present before the board and may call upon any such person to give evidence or to produce any specified documents or to give evidence and produce such documents.

16. *Penalty for non-attendance or refusing to give evidence etc.*

No. 3674 s. 16.
S. 16
amended by
No. 7933
s. 2(b).

Every person who—

- (a) being served as aforesaid with a summons to attend the board fails without reasonable excuse to attend as required or to produce any documents in his custody possession or control which he is required by the summons to produce;
- (b) happening to be present before the board and being required so to do refuses to be sworn or without lawful excuse refuses or fails to answer any question touching the subject-matter of inquiry or to produce any document—

shall be guilty of an offence against this Act and liable to be dealt with in accordance with section 20.

17. *Power to send for witnesses and documents*

No. 3674 s. 17.

Where a commission has been heretofore or is hereafter issued by the Governor in Council to any persons to make any inquiry the president or chairman of the commission or the sole commissioner (as the case may be) may by

writing under his hand summon any person to attend the commission at a time and place named in the summons, and then and there to give evidence or to produce any document in his custody possession or control material to the subject-matter of inquiry or to give evidence and produce any such document: Provided that no person shall be compelled to answer any question or to produce any document that he would not be compellable to answer or produce at the trial of an action in the Supreme Court. Such summons may be served by delivering the same to the person required to attend or by leaving the same at his usual place of abode.

No. 3674 s. 18.

18. *Power of commissioner to examine upon oath etc.*⁴

Any commissioner may administer an oath to and may examine upon oath any person so summoned or who happens to be present before the commission and may call upon any such person to give evidence or to produce any specified documents or to give evidence and produce such documents.

No. 3674 s. 19.
S. 19
amended by
No. 7933
s. 2(c).

19. *Penalty for non-attendance, refusing to give evidence etc.*

Every person who—

- (a) being served as aforesaid with a summons to attend the commission fails without reasonable excuse to attend or to produce any documents in his custody possession or control which he is required by the summons to produce; or
 - (b) happening to be present before the commission and being required so to do refuses to be sworn or without lawful excuse refuses or fails to answer any question
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touching the subject-matter of inquiry or to produce any document—

shall be guilty of an offence against this Act and liable to be dealt with in accordance with section 20.

20. Chairman to report to law officer if witness fails to attend etc.

No. 3674 s.20.

(1) Whenever in the opinion of the board or commission any person has been guilty of an offence against section 16 or section 19 the chairman or sole member of the board or the president or chairman of the commission or the sole commissioner (as the case may be) may certify the facts to a law officer.

S. 20(1) substituted by No. 7933 s. 2(d).

(2) Upon receipt of such certificate the law officer may apply or cause an application to be made to the Supreme Court for an order calling upon such person to show cause why he should not be dealt with for an offence against this Act which order such court is hereby empowered to make.

S. 20(2) amended by No. 110/1986 s. 140(2).

(3) Upon the return of such order if the Supreme Court is satisfied that such person has been guilty of an offence against this Act such person may for such offence be by such court fined a sum of not more than 15 penalty units or imprisoned for a term of not more than three months.

S. 20(3) amended by Nos 7933 s. 2(e), 9554 s. 2(2), 110/1986 s. 140(2).

* * * * *

S. 20(4) repealed by No. 110/1986 s. 140(2).

(5) Where a person is convicted of an offence against section 16 or section 19, that person shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than

S. 20(5) inserted by No. 7933 s. 2(f), amended by No. 9554 s. 2(2).

s. 20A

15 penalty units or imprisonment for a term of not more than three months.

S. 20(6)
inserted by
No. 7933
s. 2(f).

- (6) Where any offence against section 16 or section 19 is committed by a person by reason of his failure to do anything which he is under this Act required or directed to do at a particular time, that offence for the purposes of sub-section (5) shall be deemed to continue so long as the thing so required or directed to be done by him remains undone notwithstanding that such time has passed.

S. 20A
inserted by
No. 7933
s. 2(g).

20A. *Summons to require continuous attendance*

A person whose attendance has been required by summons served under section 14 or section 17 is required to attend at the time and place to which the inquiry is adjourned or postponed without the issue or service of any further summons.

No. 3674 s. 21.

21. *Allowances to witnesses*

- (1) The Governor in Council may make regulations prescribing a scale of allowances to be paid to any witness or person required to produce documents summoned under this Division for his travelling expenses and maintenance while absent from his usual place of abode.

* * * * *

S. 21(2)
amended by
No. 7933
s. 2(h),
repealed by
No. 31/1994
s. 3(Sch. 1
item 25).

S. 21A
inserted by
No. 8190
s. 2(1).

21A. *Privileges and immunities in relation to inquiries*

- (1) Where, either before or after the commencement of this Act, a board has been appointed or a commission has been issued to persons by the Governor in Council to make an inquiry—

- (a) the members of the board or the persons to whom the commission has been issued (as the case requires);
- (b) legal practitioners and other persons appearing by leave before the board or commission; and
- (c) witnesses in the inquiry—

shall have and shall be deemed always to have had the same privileges and immunities in respect of any act matter or thing done in or in relation to or arising in or out of the inquiry or any report of the inquiry as they would have or have had if the act matter or thing was done in or in relation to or arose in or out of an action in the Supreme Court of Victoria or a report of any such action.

- (2) This section shall be read as in aid of and not in derogation from any Act law rule or practice that applies to or in relation to any such inquiry.

21B. *Express reference necessary to include section 21A*

A reference in any other Act to all or any of the provisions of this Act shall not include a reference to section 21A unless it is expressly stated that section 21A is included.

S. 21B
inserted by
No. 8190
s. 2(1).

21C. *Sections 20 and 20A to apply in certain cases*

Where in any Act—

- (a) a person or body is expressed to have the powers conferred by section 16 upon a board appointed by the Governor in Council or upon the chairman of the board; or
- (b) the provisions of section 16 are expressed to extend or apply to or in relation to—
 - (i) a person or body; or

S. 21C
inserted by
No. 8190
s. 2(1).

- (ii) an appeal to, proceedings before or an investigation or inquiry by a person or body—

the provisions of sections 20 and 20A and of any rules or orders made under sub-section (4) of the said section 20 shall, with such adaptations as are necessary, extend and apply to and in relation to the person or body and any such appeal, proceedings, investigation or inquiry.

Pt 1 Div. 6
(Heading and
ss 21D–21H)
inserted by
No. 10074
s. 4(1).

Division 6—Disclosure of Information Relating to Applications for Legal Aid

S. 21D
inserted by
No. 10074
s. 4(1).

21D. Definitions⁵

In this Division, unless inconsistent with the context or subject-matter—

"applicant" means a person—

- (a) who proposes to apply—
 - (i) to a legal aid body for legal aid; or
 - (ii) to Victoria Legal Aid for legal assistance under the **Legal Aid Act 1978**; or
- (b) who applies to a legal aid body for legal aid;

"legal aid" means—

- (a) the provision of legal services without charge or upon condition that a person makes a payment or payments towards the cost of providing those services, including any out-of-pocket expenses incurred or to be incurred in providing those services;

S. 21D def. of
"applicant"
amended by
No. 48/1995
s. 11(4)(a)(i).

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- (b) the provision in respect of legal services provided or to be provided by a private practitioner of the whole or part of the cost of providing those services, including any out-of-pocket expenses incurred or to be incurred in providing those services; or
 - (c) both (a) and (b);

"legal aid body" means a body of persons whether corporate or unincorporate the sole or principal function of which is the provision of legal aid, but does not include a private practitioner or Victoria Legal Aid;

S. 21D def. of "legal aid body" amended by No. 48/1995 s. 11(4)(a)(ii).

* * * * *

S. 21D def. of "Legal Aid Commission" repealed by No. 48/1995 s. 11(4)(a)(iii).

"member of a legal aid body" means any member of a legal aid body, any employee of a legal aid body and any person working with or for a legal aid body (whether or not for fee or reward);

"private practitioner" means a person engaged in legal practice—

S. 21D def. of "private practitioner" substituted by No. 35/1996 s. 453(Sch. 1 item 29.1), amended by No. 102/1997 s. 49(Sch. item 2.1).

- (a) as a sole practitioner or an incorporated practitioner (within the meaning of the **Legal Practice Act 1996**); or
- (b) in partnership; or
- (c) as the employee of a person referred to in paragraph (a) or (b); or
- (d) as a director of an incorporated practitioner; or

- (e) as an interstate practitioner within the meaning of the **Legal Practice Act 1996**;

S. 21D def. of "Victoria Legal Aid" inserted by No. 48/1995 s. 11(4)(a)(iv).

"Victoria Legal Aid" means Victoria Legal Aid established under the **Legal Aid Act 1978**.

S. 21E inserted by No. 10074 s. 4(1).

21E. *Disclosure of information etc. relating to proposed applications*⁶

- (1) Any person or any member of a legal aid body who advises an applicant in relation to or assists an applicant in the preparation of a proposed application for legal aid shall not without the consent of the applicant—
- (a) produce in a court any document received by the person body or member in relation to the proposed application for legal aid; or
 - (b) communicate or permit to be communicated except to a private practitioner acting for the applicant or give in evidence in a court any information received by the person body or member in relation to the proposed application for legal aid.
- (2) A court shall not have power to compel any such person or member to produce any such document or communicate or give in evidence any such information unless the applicant has consented to that production or communication or to the giving of that evidence.
- (3) In this section, **"proposed application for legal aid"** means an application proposed to be made—
- (a) to a legal aid body for legal aid; or
-

-
- (b) to Victoria Legal Aid for legal assistance under the **Legal Aid Act 1978**.

S. 21E(3)(b) substituted by No. 48/1995 s. 11(4)(b).

21F. *Disclosure of information etc. relating to applications*

S. 21F inserted by No. 10074 s. 4(1).

- (1) A member of a legal aid body shall not without the consent of the applicant—
- (a) produce in a court any document received by the body or member in relation to an application made to the body for legal aid; or
 - (b) communicate or permit to be communicated except to a private practitioner acting for the applicant or give in evidence in a court any information received by the body or member in relation to an application made to the body for legal aid.
- (2) A court shall not have power to compel any member of a legal aid body to produce any such document or communicate or give in evidence any such information unless the applicant has consented to that production or communication or to the giving of that evidence.

21G. *Disclosure of information etc. where applicant has died*

S. 21G inserted by No. 10074 s. 4(1).

- (1) Where an applicant has died, a consent for the purposes of this Division may be given by the legal personal representative or spouse of the deceased applicant or a child of the deceased applicant.
- (2) This Division shall cease to have any application at and from the time at which there is no legal personal representative spouse or child of the deceased applicant.

S. 21H
inserted by
No. 10074
s. 4(1).

21H. Application of this Division⁷

(1) This Division applies whether or not—

S. 21H(1)(a)
amended by
No. 48/1995
s. 11(4)(c)(ii).

(a) an application proposed to be made to a legal aid body or Victoria Legal Aid is made; or

(b) a legal aid body, to which an application is made provides legal aid.

S. 21H(2)
amended by
No. 48/1995
s. 11(4)(c)(i)(ii).

(2) Nothing in this Division applies to or in relation to any investigation of or legal proceeding brought in respect of the giving of false information in or in connexion with an application to a legal aid body for legal aid or to Victoria Legal Aid for legal assistance under the **Legal Aid Act 1978**.

Pt 1 Div. 7
(Heading and
ss 21I, 21J)
inserted by
No. 10231 s. 5.

Division 7—Family Mediations

S. 21I
inserted by
No. 10231 s. 5.

21I. Definitions

(1) In this Division—

"family mediation centre" means an organization declared by Order of the Governor in Council to be a family mediation centre;

"family mediator" means a person who is—

(a) a marriage counsellor under the Family Law Act 1975 of the Commonwealth as amended and in force for the time being; or

(b) declared a family mediator under subsection (2).

- (2) The Secretary to the Department of Justice may declare a person to be a family mediator by notice published in the Government Gazette.

S. 21I(2) amended by Nos 57/1989 s. 3(Sch. item 67.8), 46/1998 s. 7(Sch. 1).

21J. Admissions etc. made at mediation conferences

Evidence of anything said or of any admission or agreement made at or of any document prepared for the purpose of a conference with a family mediator in connexion with a family mediation centre is not admissible in any court or legal proceeding.

S. 21J inserted by No. 10231 s. 5, amended by No. 42/1987 s. 5.

Division 8—Dispute Settlement Centres⁸

Pt 1 Div. 8 (Heading and ss 21K–21N) inserted by No. 42/1987 s. 4(1), amended by No. 57/1990 s. 8(1)(a).

21K. Definitions

In this Division—

"dispute settlement centre" means an organisation declared by Order of the Governor in Council to be a dispute settlement centre;

"mediator" means a person who is declared, by notice by the Secretary to the Department of Justice published in the Government Gazette, to be a mediator.

S. 21K inserted by No. 42/1987 s. 4(1), amended by No. 57/1990 s. 8(1)(b)(c).

S. 21K def. of "mediator" amended by No. 46/1998 s. 7(Sch. 1).

21L. Admissions etc. at mediation conferences

Evidence of anything said or of any admission or agreement made at, or of any document prepared for the purpose of, a conference with a mediator in connection with a dispute settlement centre is not

S. 21L inserted by No. 42/1987 s. 4(1), amended by No. 57/1990 s. 8(1)(b)(c).

admissible in any court or legal proceeding, except with the consent of all persons who were present at that conference.

S. 21M
inserted by
No. 42/1987
s. 4(1),
amended by
No. 57/1990
s. 8(1)(b)(c).

21M. Confidentiality

- (1) A person who is or has been—
- (a) a mediator; or
 - (b) a member or employee of a dispute settlement centre; or
 - (c) a person working with or for a dispute settlement centre (whether or not for fee or reward)—

shall not communicate to any other person or publish any information or document acquired by the person by reason of being such a mediator, member, employee or person unless the communication or publication—

- (d) is made with the consent of the person from whom the information or document was obtained; or
- (e) is made for the purposes of evaluating the operation and activities of neighbourhood mediation centres and does not disclose the identity of any person without his or her consent; or
- (f) is made by a person who reasonably considers that it is necessary to disclose the information or document for the purpose of preventing or minimising injury or damage to any person or property.

Penalty: 20 penalty units.

(2) In sub-section (1)—

"dispute settlement centre" includes
neighbourhood mediation centre;

"mediator" includes neighbourhood mediator.

S. 21M(2)
inserted by
No. 57/1990
s. 8(2).

21N. *Exoneration from liability*

A matter or thing done in good faith for the
purpose of a conference with a mediator by a
person who is—

- (a) a mediator; or
- (b) a member or employee of a dispute
settlement centre; or
- (c) a person working with or for a dispute
settlement centre (whether or not for fee or
reward)—

does not subject the person to any action, liability,
claim or demand.

S. 21N
inserted by
No. 42/1987
s. 4(1),
amended by
No. 57/1990
s. 8(1)(b)(c).

PART II—WITNESSES

Division 1—Who May Testify

No. 3674 s. 22.

22. *Witness not to be incapacitated by crime or interest*

No person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence either in person or by deposition according to the practice of the court on the trial of any issue joined or of any matter or question or on any inquiry arising in any suit action or proceeding in any court or before any person having by law or by consent of parties authority to hear receive and examine evidence. But every person so offered may and shall be admitted to give evidence, notwithstanding that such person has an interest in the matter in question or in the event of the trial of any issue matter question or inquiry or of the suit action or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness has been previously convicted of any crime or offence.

S. 23
substituted by
No. 6758 s. 2.

23. *Evidence of children and people with impaired mental functioning*

S. 23(1)
substituted by
No. 8/1991
s. 8(a).

- (1) If a person with impaired mental functioning or under the age of 14 is called as a witness in any legal proceeding and that person does not in the opinion of the court understand the nature of an oath, his or her evidence may be received, though not given on oath, if, in the opinion of the court, he or she—
- (a) understands the duty of speaking the truth;
and

-
- (b) is capable of responding rationally to questions about the facts in issue.
- (2) The competency of a person with impaired mental functioning or under the age of 14 to give evidence must be determined in the absence of the jury. S. 23(2) substituted by No. 8/1991 s. 8(a).
- (2A) On the trial of a person for an offence, the judge must not warn, or suggest in any way to, the jury that the law regards people with impaired mental functioning or children as an unreliable class of witness. S. 23(2A) inserted by No. 8/1991 s. 8(a).
- (2B) Nothing in sub-section (2A) prevents a judge from making any comment on evidence given in the proceeding that it is appropriate to make in the interests of justice. S. 23(2B) inserted by No. 8/1991 s. 8(a).
- (3) If any person whose evidence is received by virtue of this section gives false evidence in such circumstances that he would if the evidence had been given on oath, have been guilty of perjury he shall be guilty of an indictable offence. S. 23(3) amended by Nos 9576 s. 11(1), 8/1991 s. 8(b).
- (4) Nothing in this section shall limit or affect the provisions of the **Crimes Act 1958** as to the reception of evidence not on oath.
- (5) Nothing in this section shall limit or affect the operation of section 102 of this Act. S. 23(5) inserted by No. 10074 s. 5.
- 23A. *Questioning of complainant who is not competent to give evidence*** S. 23A inserted by No. 8/1991 s. 9.
- (1) This section applies to a legal proceeding that relates (wholly or partly) to a charge for a sexual offence committed against a person with impaired mental functioning who is not competent to give evidence.
- (2) The court may give directions for the complainant to be seen by it and the jury and questioned about matters other than the facts in issue if the capacity
-

of the complainant to consent to the sexual activity, or the state of mind of the accused in relation to the complainant's capacity to so consent, is relevant.

- (3) The directions given by the court under subsection (2) may—
- (a) require the complainant to be present in the room in which the court is sitting or to be elsewhere but to be able to be seen and heard in that room by means of closed-circuit television or other facilities; or
 - (b) specify how the questioning is to be carried out and, in particular, whether and, if so, how a member of the jury may ask a question; or
 - (c) authorise a video recording to be made and viewed by the court and the jury.

No. 3674 s. 24.
S. 24
amended by
No. 9230 s. 4.

24. *Parties and husbands and wives may be witnesses*

On the trial of any issue joined or of any matter or question or on any inquiry arising in any suit action or proceeding in any court or before any person having by law or by consent of parties authority to hear receive and examine evidence, the parties thereto, and the persons in whose behalf any such suit action or proceeding is brought or defended, and the husbands, former husbands, wives and former wives of such parties and persons respectively, shall (except as hereinafter excepted) be competent and compellable to give evidence either in person or by deposition according to the practice of the court on behalf of either or any of the parties to the said suit action or proceeding.

25. Abolition of accused's right to make unsworn statement or to give unsworn evidence⁹

Any rule of law or procedure or any practice permitting a person who is charged with the commission of a criminal offence to make an unsworn statement or to give unsworn evidence in answer to the charge is abolished.

No. 3674 s. 25.
S. 25
substituted by
Nos 37/1986
s. 4, 12/1993
s. 3.

Division 2—Privileges Disabilities and Obligations of Witnesses

26. Exceptions as to criminal cases

Nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence or any offence punishable on summary conviction competent or compellable to give evidence for or against himself; or (except as hereinafter mentioned) shall render any person compellable to answer any question tending to criminate himself, or shall in any criminal proceeding render any husband or former husband competent or compellable to give evidence for or against his wife or former wife or any wife or former wife competent or compellable to give evidence for or against her husband or former husband: Provided that nothing in this section shall affect or limit the provisions of the **Crimes Act 1958** whereby in the circumstances there set out a person charged or his wife or former wife or her husband or former husband (as the case may be) may be called as a witness in a criminal proceeding¹⁰.

No. 3674 s. 26.
S. 26
amended by
No. 9230 s. 5.

27. Communications to husband or wife privileged

(1) No husband shall be compellable to disclose any communication made to him by his wife during the marriage; and no wife shall be compellable to

No. 3674 s. 27.
S. 27
amended by
No. 9230
s. 6(a).

disclose any communication made to her by her husband during the marriage.

S. 27(2)
inserted by
No. 9230
s. 6(b).

- (2) Nothing in sub-section (1) shall apply to any criminal proceeding or to any proceeding for the grant, variation or revocation of bail.

Nos 3674
s. 28, 5183
s. 7.

28. *Confessions to clergymen and medical men*

S. 28(1)
amended by
No. 7418
s. 2(a).

- (1) No clergyman of any church or religious denomination shall without the consent of the person making the confession divulge in any suit action or proceeding whether civil or criminal any confession made to him in his professional character according to the usage of the church or religious denomination to which he belongs.

S. 28(2)
amended by
Nos 7418
s. 2(b), 10074
s. 6(a),
83/1987
s. 105.

- (2) No physician or surgeon shall without the consent of his patient divulge in any civil suit action or proceeding or an investigation by a Complaints Investigator under the **Accident Compensation Act 1985** any information which he has acquired in attending the patient and which was necessary to enable him to prescribe or act for the patient.

S. 28(3)
inserted by
No. 7418
s. 2(c),
substituted by
No. 10074
s. 6(b).

- (3) Where a patient has died, no physician or surgeon shall without the consent of the legal personal representative or spouse of the deceased patient or a child of the deceased patient divulge in any civil suit action or proceeding any information which the physician or surgeon has acquired in attending the patient and which was necessary to enable the physician or surgeon to prescribe or act for the patient.

S. 28(4)
inserted by
No. 10074
s. 6(b).

- (4) Sub-section (3) shall cease to have any application to or in relation to any civil suit action or proceeding at and from the time at which there is no legal personal representative spouse or child of the deceased patient.

- (5) Sub-sections (2) and (3) do not apply to or in relation to—
- (a) an action brought under Part III of the **Wrongs Act 1958** to recover damages for the death of the patient;
 - (b) proceedings brought under the **Workers Compensation Act 1958** or the **Accident Compensation Act 1985** to recover compensation for the death of the patient; or
 - (c) any civil suit action or proceeding in which the sanity or testamentary capacity of the patient is the matter in dispute.

S. 28(5)
inserted by
No. 10074
s. 6(b).

S. 28(5)(b)
amended by
No. 10191
s. 276.

29. *Where witness must answer questions which disgrace or criminate*

No. 3674 s. 29.
S. 29
amended by
No. 9576
s. 11(1).

No witness shall on the trial of any issue joined or of any matter or question or on any inquiry arising in any suit action or proceeding whether civil or criminal be permitted to refuse to answer any question which is relevant and material to the matter in issue on the ground that the answer may expose him to any penalty or forfeiture or may disgrace or criminate himself, unless the court or person having by law or by consent of parties authority to hear receive and examine evidence is of opinion that the answer will tend to subject such witness to punishment for treason or an indictable offence.

30. *Statements made by witness before board or commission not to be used against witness*

No. 3674 s. 30.

No statement made by any person in answer to any question before any board or commission empowered under the provisions of this Act or other like body or person empowered under any other Act to summon witnesses shall (except in case of a charge against such person for perjury

committed by him in making such statement) be admissible in evidence in any proceedings civil or criminal against him, nor be made the ground of any prosecution action or suit against him; and a certificate signed by the chairman of such board or commission or body or by the sole commissioner or by such person that such statement was made in answer to any such question or in the course of any inquiry before such board commission body or person shall be conclusive evidence that the same was so made.

No. 5647 s. 2.

31. *Admissibility of evidence or statements as to access by husband or wife*

Notwithstanding anything in any Act or any rule of law, neither the evidence of any person nor any statement made out of court by any person shall be inadmissible in any proceedings by reason of the fact that it is tendered with the object of proving or that it proves or tends to prove that marital intercourse did or did not take place at any time or during any period between that person and a person who is or was his or her wife or husband or that any child is or was or is not or was not their legitimate child.

No. 5647 s. 3.

32. *Compellability of parties and witnesses regarding evidence relating to or establishing adultery*

Notwithstanding anything in any Act or any rule of law, in any proceedings—

- (a) a party shall not be entitled to refuse to answer any interrogatory or to give discovery of documents;
 - (b) a witness, whether a party or not, shall not be entitled to refuse to answer any question, whether relevant to any issue or relating to credit merely—
-

on the ground solely that such answer or discovery would or might relate to, or would tend or might tend to establish, adultery by that party or that witness, or by any other person with that party or that witness (as the case may be).

32A. Documents relating solely to party's case

The rule of law whereby in any civil proceedings a party to the proceedings cannot be compelled to produce any documents relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party is hereby abrogated.

S. 32A
inserted by
No. 110/1986
s. 133.

Division 2A—Confidential Communications

Pt 2 Div. 2A
(Heading and
ss 32B–32G)
inserted by
No. 21/1998
s. 4.

32B. Definitions

(1) In this Division—

"confidential communication" means a communication, whether oral or written, made in confidence by a person against whom a sexual offence has been, or is alleged to have been committed to a registered medical practitioner or counsellor in the course of the relationship of medical practitioner and patient or counsellor and client, as the case requires, whether before or after the acts constituting the offence occurred or are alleged to have occurred;

"counsellor" means a person who is treating a person for an emotional or psychological condition;

"harm" includes actual physical bodily harm, financial loss, stress, shock, damage to

S. 32B
inserted by
No. 21/1998
s. 4.

reputation and emotional or psychological harm (such as shame, humiliation or fear);

"protected confider" means a person who made a confidential communication;

"protected evidence" means evidence that is protected from being adduced by section 32C(1);

"protected identity information", in relation to a person, is information about, or enabling a person to ascertain, the address (including a private, business or official address) or telephone number (including a private, business or official telephone number) of the person;

"registered medical practitioner" means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

"sexual offence" means an offence to which clause 1 of Schedule 1 to the **Sentencing Act 1991** applies.

- (2) For the purposes of this Division, a communication may be made in confidence even if it is made in the presence of a third party if the third party's presence is necessary to facilitate communication or further the treatment or counselling process.

S. 32C
inserted by
No. 21/1998
s. 4.

32C. Exclusion of evidence of confidential communications

- (1) Evidence is not to be adduced in a legal proceeding if it would disclose—
- (a) a confidential communication; or
 - (b) the contents of a document recording a confidential communication—

unless the court grants leave to adduce it and the party seeking to have it adduced has given notice of their intention in accordance with sub-section (2).

- (2) A party seeking to adduce protected evidence must, not less than 14 days before the evidence is proposed to be adduced, give notice in writing of their intention to—
 - (a) each other party to the proceeding; and
 - (b) in the case of a criminal proceeding, the informant; and
 - (c) the medical practitioner or counsellor, as the case requires, if not a party.
- (3) The court may—
 - (a) fix a period of notice shorter than that referred to in sub-section (2); or
 - (b) waive the requirement to give notice under sub-section (2).
- (4) On receipt of a notice under sub-section (2)(b), the informant must give a copy of the notice to the protected confider within a reasonable time after its receipt.
- (5) Whether or not notice has been given under sub-section (2) or (4), the medical practitioner or counsellor, as the case requires, and the protected confider may, with the leave of the court, appear in the proceeding and make submissions.
- (6) For the purpose of determining an application for leave under sub-section (1) or (5), the court may order that the document be produced to it and may inspect it but must not make the document available, or disclose its contents, to the applicant for leave.

- (7) Evidence that, because of sub-section (1), is not to be adduced in a legal proceeding is not admissible in the proceeding.

S. 32D
inserted by
No. 21/1998
s. 4.

32D. *Restriction on granting leave*

- (1) A court must not grant leave to adduce protected evidence unless it is satisfied, on the balance of probabilities, that—
- (a) the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce it, have substantial probative value to a fact in issue; and
 - (b) other evidence of similar or greater probative value concerning the matters to which the protected evidence relates is not available; and
 - (c) the public interest in preserving the confidentiality of confidential communications and protecting a protected confider from harm is substantially outweighed by the public interest in admitting, into evidence, evidence of substantial probative value.
- (2) Without limiting the matters that the court may take into account for the purposes of sub-section (1)(c), the court must take into account the likelihood, and the nature or extent, of harm that would be caused to the protected confider if the protected evidence is adduced.
- (3) Leave may be granted to adduce evidence of part of—
- (a) a confidential communication; or
-

(b) the contents of a document recording a confidential communication—

and, if so, that part of the document may be made available, or that part of its contents disclosed, in any manner that the court thinks fit to the party seeking to adduce it in evidence.

- (4) The court must state its reasons for giving or refusing to give leave under this section.
- (5) If leave is refused under this section, that fact must not be referred to in the presence of the jury, if any.

32E. *Limitations on privilege*

- (1) This Division does not prevent the adducing of evidence—
- (a) with the consent of the protected confider or, if he or she is under 14 years of age, with the consent of any person whom the court regards as being an appropriate person to give that consent; or
- (b) of information acquired by a registered medical practitioner by physical examination (including communications made during the examination) of the protected confider in relation to the commission or alleged commission of the sexual offence; or
- (c) of a communication made, or the contents of a document prepared, for the purpose of a legal proceeding arising from the commission or alleged commission of the sexual offence; or
- (d) of a communication made, or the contents of a document prepared, in the furtherance of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty; or

S. 32E
inserted by
No. 21/1998
s. 4.

- (e) of a communication made if it is evidence of the commission of an offence of wilful and corrupt perjury.
- (2) For the purposes of sub-section (1)(d), if the commission of the fraud, offence or act is a fact in issue and there are reasonable grounds for finding that—
 - (a) the fraud, offence or act was committed; and
 - (b) a communication was made or document prepared in furtherance of the commission of the fraud, offence or act—
 the court may find that the communication was so made or document so prepared.
- (3) If consent to the adducing of evidence is not given under sub-section (1)(a), that fact must not be referred to in the presence of the jury, if any.

S. 32F
inserted by
No. 21/1998
s. 4.

32F. *Ancillary orders available on a granting of leave*

Without limiting any action that the court may take to limit the possible harm, or extent of the harm, likely to be caused by the disclosure of protected evidence, the court may—

- (a) order that all or part of the evidence be heard in camera; or
- (b) make such orders relating to the suppression of publication of all or part of the evidence given before the court as, in its opinion, are necessary to protect the safety or welfare of the protected confider or the registered medical practitioner or counsellor, as the case requires; or
- (c) make such orders relating to disclosure of protected identity information as, in the opinion of the court, are necessary to protect

the safety or welfare of the protected confider or the safety of the registered medical practitioner or counsellor, as the case requires.

32G. Operation of Division

S. 32G
inserted by
No. 21/1998
s. 4.

- (1) Nothing in this Division affects the operation of—
- (a) section 28, 37, 37A, 39 or 40; or
 - (b) Division 1A of Part 6 of the **Sentencing Act 1991**.
- (2) Sub-section (1) applies whether a communication was made before or after the date on which the sexual offence was committed or alleged to have been committed and whether made before or after the date on which section 4 of the **Evidence (Confidential Communications) Act 1998** came into operation.

Division 3—Examination and Cross-examination of Witnesses

33. Witness may be questioned as to previous conviction

No. 3674 s. 31.

Except as hereinafter provided a witness may be questioned as to whether he has been convicted of any indictable or other offence; and upon being so questioned if he either denies the fact or refuses to answer, it shall be lawful for the party so questioning to prove such conviction.

34. Adverse witness may be contradicted by party calling witness

No. 3674 s. 32.

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character but may contradict him by other evidence, or (in case the witness in the opinion of the court proves adverse) may by leave of such court prove that he has made at other times a

statement inconsistent with his present testimony. But before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness; and he must be asked whether or not he has made such statement.

No. 3674 s. 33.

35. *Evidence of previous statement of witness*

If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the cause or prosecution and inconsistent with his present testimony does not distinctly admit that he has made such statement, proof may be given that he did in fact make it. But before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness and he must be asked whether or not he has made such statement.

No. 3674 s. 34.

36. *Witness may be cross-examined as to written statements without producing them*

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject-matter of the cause or prosecution without such writing being shown to him. But if it is intended to contradict such witness by the writing, his attention must before such contradictory proof can be given be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always that it shall be competent for the court at any time during the trial or inquiry to require the production of the writing for inspection and the court may thereupon make such use of it for the purposes of the trial or inquiry as the court thinks fit.

37. *Cross-examination as to credit*

No. 3674 s. 35.

If any question put to a witness upon cross-examination relates to a matter not relevant to the suit or proceeding except in so far as it affects the credit of the witness by injuring his character it shall be the duty of the court to decide whether or not the witness shall be compelled to answer it, and the court may if it thinks fit warn the witness that he is not obliged to answer it.

In exercising this discretion the court shall have regard to the following considerations—

- (a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (b) such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect or would affect in a slight degree only the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness' character and the importance of his evidence.

S. 37A
inserted by
No. 8950 s. 3.

37A. *Special rules of evidence in relation to certain offences which relate to rape*

S. 37A(1)
amended by
Nos 9509
s. 10, 57/1989
s. 3(Sch. item
67.9(a)),
8/1991
s. 10(1)(a).

(1) Notwithstanding anything in this or any other Act or any rule of law to the contrary the following Rules shall apply in relation to any proceeding, including a committal proceeding, that relates to a charge for a sexual offence, whether or not the proceeding relates to any other charges against the same or any other person and whether or not it is alleged that there are aggravating circumstances:

(1) The court shall forbid any question as to and shall not receive evidence of the general reputation of the complainant with respect to chastity.

(2) Without the leave of the court—

S. 37A(1)
Rule (2)(a)
amended by
Nos 8/1991
s. 10(1)(b),
81/1991
s. 4(a).

(a) the complainant shall not be cross-examined as to his or her sexual activities; and

S. 37A(1)
Rule (2)(b)
amended by
No. 81/1991
s. 4(b).

(b) no evidence shall be admitted as to the sexual activities of the complainant.

(3) The court shall not grant leave under Rule (2) unless—

(a) it is satisfied that the evidence has substantial relevance to facts in issue or is proper matter for cross-examination as to credit; or

-
- (b) it is satisfied that the evidence has substantial relevance to the issue of appropriate sentence and the accused person has—
- (i) prior to the committal proceeding signified in writing before a magistrate his or her intention of pleading guilty to all the sexual offences on which he or she is there charged;
- (ii) pleaded guilty to all such offences; or
- (iii) been convicted of all such offences.
- (4) Evidence that relates to or tends to establish the fact that the complainant was accustomed to engage in sexual activities shall not be regarded—
- (a) as having a substantial relevance to the facts in issue by virtue of any inferences it may raise as to general disposition; or
- (b) as being proper matter for cross-examination as to credit in the absence of special circumstances by reason of which it would be likely materially to impair confidence in the reliability of the evidence of the complainant.
- (5) An application for leave under Rule (2)—
- (aa) must, in the case of an application to cross-examine the complainant as to his or her sexual activities—
- (i) be in writing and given to the Director of Public Prosecutions—
- S. 37A(1)
Rule (3)(b)
amended by
Nos 57/1989
s. 3(Sch. item
67.9(b)(i)(ii)),
8/1991
s. 10(1)(c)(i)(ii).**
- S. 37A(1)
Rule (4)
amended by
No. 81/1991
s. 4(c).**
- S. 37A(1)
Rule (5)(aa)
inserted by
No. 81/1997
s. 9(1).**

- (A) in the case of a committal proceeding, on or before the committal mention date; or
- (B) in the case of a trial, at least 14 days before the date fixed by the Criminal Trial Listing Directorate as the date on which the trial is to be listed for hearing;

(ii) set out—

- (A) the initial questions sought to be asked of the complainant; and
- (B) the scope of the questioning sought to flow from the initial questioning; and
- (C) how the evidence sought to be elicited from the questioning has substantial relevance to facts in issue or why it is proper matter for cross-examination as to credit;

S. 37A(1)
Rule (5)(a)
amended by
No. 81/1997
s. 9(2).

- (a) shall be heard in the absence of the jury (if any) and, if the accused so requests, in the absence of the complainant;
 - (b) shall be determined after the court has allowed such submissions or other evidence (sworn or unsworn) as the court considers necessary for the determination of the application; and
 - (c) shall not be granted unless the court considers that the requirements of Rules (3) and (4) are satisfied but in that case may be granted provided that
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the court considers it desirable in the interests of justice so to do.

- (5A) The Director of Public Prosecutions must forward an application referred to in Rule (5)(aa) given to the Director of Public Prosecutions under that Rule—
- (a) in the case of a committal proceeding, to the registrar at the venue of the Magistrates' Court at which the committal proceeding is to be held on or before the committal mention date;
- (b) in the case of a trial, to the Criminal Trial Listing Directorate together with the copy of the presentment required to be forwarded to that Directorate.
- (5B) Nothing in Rule (5) or (5A) prevents a court, because of the existence of exceptional circumstances, hearing and determining an application to cross-examine the complainant as to his or her sexual activities that is made after the expiry of the period referred to in Rule (5)(aa)(i).
- (5C) Despite anything to the contrary in Rule (5), the court may, because of the existence of exceptional circumstances, waive the requirement that an application to cross-examine the complainant as to his or her sexual activities be made in writing.
- (6) If the court grants leave under Rule (2) it—
- (a) must state in writing the reasons for granting leave; and
- (b) cause those reasons to be entered in the records of the court.

S. 37A(1)
Rule (5A)
inserted by
No. 81/1997
s. 9(3).

S. 37A(1)
Rule (5B)
inserted by
No. 81/1997
s. 9(3).

S. 37A(1)
Rule (5C)
inserted by
No. 81/1997
s. 9(3).

S. 37A(1)
Rule (6)
inserted by
No. 8/1991
s. 10(1)(d).

S. 37A(2)
amended by
No. 16/1986
s. 30, repealed
by No.
57/1989
s. 3(Sch. item
67.9(c)), new
s. 37A(2)
inserted by
No. 8/1991
s. 10(2).

S. 37B
inserted by
No. 8/1991
s. 11(1).

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- (2) The failure of a court to comply with Rule (6) in sub-section (1) does not invalidate any order made by it.

37B. *Use of recorded evidence-in-chief in certain proceedings*

- (1) This section applies to a legal proceeding, other than a committal proceeding, that relates (wholly or partly) to a charge for—
- (a) a sexual offence; or
 - (b) an indictable offence which involves an assault on, or injury or a threat of injury to, a person.
- (2) The evidence-in-chief of a witness for the prosecution may be given (wholly or partly) in the form of an audio or video recording of the witness answering questions put to him or her by a person prescribed for the purposes of this section if the witness is a person with impaired mental functioning or is under the age of 18.
- (3) Subject to sub-section (4), the recording is admissible in evidence in the proceeding as if its contents were the direct testimony of the witness if—
- (a) it is proved that a transcript of it was served personally on the defendant or by post on his or her legal practitioner at least 14 days before the commencement of the hearing of the proceeding; and
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- (b) it is proved that the defendant and his or her legal practitioner were, in accordance with the regulations, given a reasonable opportunity to listen to and, in the case of a video recording, view the recording; and
- (c) at the proceeding the witness—
 - (i) identifies himself or herself and attests to the truthfulness of the contents of the recording; and
 - (ii) is available for cross-examination and re-examination.
- (4) The court may rule as inadmissible the whole or any part of the contents of a recording.

37C. Alternative arrangements for giving evidence in certain proceedings

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S. 37C inserted by No. 8/1991 s. 11(1A) (as amended by No. 81/1991 s. 7).

S. 37C(1) repealed by No. 81/1991 s. 5.

- (2) The court may, of its own motion or on the application of a party to a legal proceeding, direct that alternative arrangements be made for the giving of evidence by a witness if—
 - (a) the proceeding relates (wholly or partly) to a charge for—
 - (i) a sexual offence; or
 - (ii) an offence where the conduct constituting the offence consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration

S. 37C(2) substituted by No. 81/1991 s. 5.

S. 37C(2)(a) amended by No. 33/1994 s. 17(2)(a), substituted by No. 81/1997 s. 10.

as defined in section 35 of the **Crimes Act 1958**; or

S. 37C(2)(b)
amended by
No. 33/1994
s. 17(2)(b),
substituted by
No. 81/1997
s. 10.

- (b) the proceeding relates (wholly or partly) to a charge for an indictable offence which involves an assault on, or injury or a threat of injury to, a person and the court is satisfied that the witness is a person with impaired mental functioning or under the age of 18.

- (3) Without limiting sub-section (2), any of the following alternative arrangements may be directed to be made—

- (a) permitting the evidence to be given from a place other than the courtroom by means of closed-circuit television or other facilities that enable communication between that place and the courtroom;
- (b) using screens to remove the defendant from the witness' direct line of vision;
- (c) permitting a person to be beside the witness while he or she is giving evidence for the purpose of providing emotional support to him or her;

S. 37C(3)(d)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.2).

- (d) requiring legal practitioners not to robe;

S. 37C(3)(e)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.2).

- (e) requiring legal practitioners to be seated while examining or cross-examining the witness;

- (f) permitting only persons specified by the court to be present while the witness is giving evidence.

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- (4) If a court directs that alternative arrangements be made for the giving of evidence by a witness, the judge must warn the jury not to draw any inference adverse to the defendant or give the evidence any greater or lesser weight because of the making of those arrangements.
 - (5) Any place outside the courtroom where a witness is permitted to give evidence under this section is to be taken to be part of the courtroom while the witness is there for the purpose of giving evidence.
 - (6) The court may at any time in the course of the proceeding vary or revoke a direction made under this section either of its own motion or on the application of a party to the proceeding.

37D. *Video link evidence from overseas in certain proceedings*

S. 37D
inserted by
No. 102/1994
s. 94.

- (1) This section applies to a legal proceeding that relates (wholly or partly) to a charge for an offence against section 49A(1) of the **Crimes Act 1958**.
- (2) The court may, on the application of a party to the legal proceeding, direct that a witness give evidence by video link if—
 - (a) the witness will give the evidence from outside Australia; and
 - (b) the witness is not a defendant in the proceeding; and
 - (c) the facilities required by sub-section (3) are available or can reasonably be made available; and
 - (d) the court is satisfied that attendance of the witness at the court to give the evidence would—

- (i) cause unreasonable expense or inconvenience; or
 - (ii) cause the witness psychological harm or unreasonable distress; or
 - (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
- (e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.
- (3) A witness can give evidence under a direction under this section only if the courtroom or other place in Victoria where the court is sitting ("the Victorian point") and the place where the evidence is given ("the overseas point") are equipped with video facilities that—
- (a) enable all persons at the Victorian point that the court considers appropriate, to see and hear the witness give the evidence; and
 - (b) enable all persons at the overseas point that the court considers appropriate, to see and hear appropriate persons at the Victorian point.
- (4) The place where a witness gives evidence under a direction under this section is to be taken to be part of the courtroom or other place in Victoria where the court is sitting while the witness is there for the purpose of giving evidence.
- (5) An oath or affirmation to be sworn or made by a witness who is to give evidence under a direction under this section may be administered either—
- (a) by means of the video link, in as nearly as practicable the same way as if the witness were to give the evidence at the courtroom or
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other place in Victoria where the court is sitting; or

- (b) at the direction of, and on behalf of, the court at the place where the witness is to give the evidence by a person authorised by the court.
- (6) A court may make any orders that are just for the payment of expenses incurred in connection with the giving of evidence under a direction by the court under this section.
- (7) This section does not prevent any other law, or any rule or regulation made under any other law, about taking evidence of a witness outside Australia from applying for the purposes of a proceeding to which this section applies.
- (8) Nothing in this section limits the application of section 37A, 37B or 37C to a charge for an offence against section 49A(1) of the **Crimes Act 1958**.

38. *Saving existing rights*

No. 3674 s. 36.

Nothing in this Division contained shall be deemed to make any witness compellable to give evidence upon any matter which he is by law now protected against disclosing.

39. *Indecent or scandalous questions*

No. 3674 s. 37.

The court shall forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

40. *Questions intended to insult or annoy*

No. 3674 s. 38.

The court shall forbid or disallow any question which appears to it to be intended to insult or

s. 41

annoy, or which though proper in itself appears to the court needlessly offensive in form.

No. 3674 s. 39.

41. Prohibited questions not to be published

It shall not be lawful for any person to print or publish any question or inquiry which has been forbidden or disallowed by the court, or in respect to which the court has warned the witness that he is not obliged to answer, and which the court has further ordered shall not be published.

S. 42
repealed by
No. 8228
s. 2(2)(a).

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Pt 2 Div. 4
(Heading and
ss 42A, 42B)
inserted by
No. 60/1993
s. 24.

Division 4—Manner of Giving Evidence

S. 42A
inserted by
No. 60/1993
s. 24.

42A. Form of evidence

- (1) Evidence may be given in the form of charts, summaries or other explanatory material if it appears to the court that the material would be likely to aid its comprehension of other evidence that has been given or is to be given.
- (2) Nothing in this section affects the operation of section 42B.

S. 42B
inserted by
No. 60/1993
s. 24.

42B. Manner of giving voluminous or complex evidence

- (1) If the court is satisfied that particular evidence that is to be given in a proceeding by a party is so voluminous or complex that it would not be possible conveniently to assess the evidence if it were given in narrative form, the court may direct the party to give the evidence in a form, specified in the direction, that would aid its assessment by the court.

- (2) The direction may also require the party to provide to the other parties copies of the evidence in the form in which the court has directed that it be given.
 - (3) A direction that includes such a requirement must specify a time within which the copies must be so provided.
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Pt 2A
(Heading and
ss 42C–42Y)
inserted by
No. 4/1997
s. 3.

PART IIA—USE OF AUDIO VISUAL AND AUDIO LINKS¹¹

Division 1—Definitions

S. 42C
inserted by
No. 4/1997
s. 3.

42C. Definitions

In this Part—

"accused person" includes a person taken into custody for an offence and the defendant in a summary hearing or committal proceeding;

"appropriate persons" means persons that the court considers to be appropriate in the particular case;

"audio link" means facilities (including telephone) that enable audio communication between persons at different places;

"audio visual link" means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places;

"child" means—

(a) in the case of a person who—

(i) has been taken into custody for an offence and is required to be brought before the Children's Court; or

(ii) is a party to a proceeding in the Children's Court; or

(iii) is the subject of an application made to, or order made by, the Children's Court—

a person who is a child within the meaning of the **Children and Young Persons Act 1989**; and

- (b) a person in respect of whom a sentencing order within the meaning of the **Children and Young Persons Act 1989** is in force who is required to appear before the Children's Court under the terms of that order or in respect of a breach of that order or on an application for the variation or revocation of that order; and
- (c) a person who is the subject of an appeal to the Supreme Court or the County Court made under the **Children and Young Persons Act 1989**; and
- (d) in any other case—a person who is under the age of 17 years;

"court point" means the courtroom or other place where the court is sitting;

"practice directions" means practice directions, statements or notes issued under section 42Q;

"remote point" means the place where—

- (a) the person appearing before the court or giving the evidence or making the submission; or
- (b) where Division 3 applies, the accused person—

is located;

"victim", in relation to an offence, means a person who, or body that, has suffered injury, loss or damage as a direct result of the offence.

Division 2—Persons other than Accused

S. 42D
inserted by
No. 4/1997
s. 3.

42D. Application of Division

This Division applies to the appearance before a court of, or the giving of evidence or making of a submission to a court by, any person in a legal proceeding, whether a party to the proceeding or not, other than the accused person in a proceeding to which Division 3 applies.

S. 42E
inserted by
No. 4/1997
s. 3.

42E. Appearance, etc. by audio visual link or audio link

- (1) Subject to section 42F and to any rules of court, a court may, on its own initiative or on the application of a party to the legal proceeding, direct that a person may appear before, or give evidence or make a submission to, the court by audio visual link or audio link from any place within or outside Victoria, or outside Australia, that is outside the courtroom or other place where the court is sitting.
 - (2) A court must not make a direction under sub-section (1) unless it is satisfied that the technical requirements specified in section 42G are met, or can reasonably be met, in the case of the particular link.
 - (3) The court may, at any time in the course of a proceeding, vary or revoke a direction under sub-section (1) either on its own initiative or on the application of a party to the proceeding.
 - (4) Without limiting sub-section (3), circumstances in which a court may vary or revoke a direction
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under sub-section (1) include the failure of the link to which the direction relates.

- (5) Each party to a proceeding may address the court in respect of the making, variation or revocation of a direction under sub-section (1).

42F. *Special provisions applicable to certain proceedings involving children*

S. 42F
inserted by
No. 4/1997
s. 3.

- (1) This section only applies with respect to a person who is a child and then only where—
- (a) the proceeding is an application to the Family Division of the Children's Court under the **Children and Young Persons Act 1989** and the child is the subject of the application; or
 - (b) the proceeding is an appeal under section 116 or 117 of the **Children and Young Persons Act 1989** and the child was the subject of the application made to, or order made by, the Children's Court.
- (2) Unless the court otherwise directs under section 42E(1), a child who is required to appear, or be brought, before a court is required to appear, or be brought, physically before the court.
- (3) A court must not make a direction under section 42E(1) unless it is satisfied that the making of the direction is—
- (a) in the best interests of the child; and
 - (b) consistent with the interests of justice.
- (4) In determining whether the making of a direction under section 42E(1) is in the best interests of a child, the court—
- (a) may have regard to the appropriateness of the direction in terms of the security and protection of the child; and

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- (b) may consider whether physical appearance before the court would cause the child to suffer emotional distress to an unacceptable level; and
 - (c) must consider any wishes expressed by the child.
- (5) In determining whether the making of a direction under section 42E(1) relating to a child is consistent with the interests of justice, the court must take into consideration the effect of the direction on the child's ability—
- (a) to comprehend the proceeding; and
 - (b) to communicate with his or her legal representative and give instructions, or express wishes, to that representative.
- (6) A court must not make a direction under section 42E(1) relating to a child unless it is satisfied that the technical requirements specified in section 42R(3) are met in the case of the particular link and, for this purpose, section 42R(3) has effect as if the child were an accused person.
- (7) A court must not make a direction under section 42E(1) that a child appear before, or give evidence or make a submission to, the court by audio link.
- (8) Section 42E has effect in relation to a child as if the child were a party to the proceeding.

S. 42G
inserted by
No. 4/1997
s. 3.

42G. *Technical requirements*

- (1) The technical requirements for an audio visual link are as follows:
 - (a) both the court point and the remote point are equipped with facilities that—
 - (i) enable all appropriate persons at the court point to see and hear the person
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- appearing before the court or giving the evidence or making the submission;
and
- (ii) enable all appropriate persons at the remote point to see and hear appropriate persons at the court point;
and
- (b) any requirements prescribed by rules of court for or with respect to—
- (i) the form of audio visual link;
- (ii) the equipment, or class of equipment, used to establish the link;
- (iii) the layout of cameras;
- (iv) the standard, or speed, of transmission;
- (v) the quality of communication;
- (vi) any other matter relating to the link;
- (c) any requirements imposed by the presiding judge or magistrate.
- (2) The technical requirements for an audio link are as follows:
- (a) both the court point and the remote point are equipped with facilities that—
- (i) enable all appropriate persons at the court point to hear the person appearing before the court or giving the evidence or making the submission; and
- (ii) enable all appropriate persons at the remote point to hear appropriate persons at the court point; and
- (b) any requirements prescribed by rules of court for or with respect to—
- (i) the form of audio link;
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- (ii) the equipment, or class of equipment, used to establish the link;
 - (iii) the standard, or speed, of transmission;
 - (iv) the quality of communication;
 - (v) any other matter relating to the link; and
- (c) any requirements imposed by the presiding judge or magistrate.

- (3) Requirements imposed by the presiding judge or magistrate under sub-section (1)(c) or (2)(c) must not be inconsistent with any provision made by this Part or any rules of court.

S. 42H
inserted by
No. 4/1997
s. 3.

42H. *Costs*

- (1) The Governor in Council may make regulations for or with respect to prescribing amounts payable to a court in respect of the costs of, and incidental to, the provision of an audio visual or audio link and ancillary equipment for the purposes of this Division.
- (2) In the exercise of its discretion as to costs, a court has full power to determine by whom and to what extent the amounts referred to in sub-section (1) are to be paid.

S. 42I
inserted by
No. 4/1997
s. 3.

42I. *Certain other laws not affected*

- (1) Nothing in this Division limits the application of section 37B, 37C or 37D to a proceeding.
- (2) Nothing in section 37B, 37C or 37D limits the application of this Division to a proceeding.

Division 3—Appearance by Accused Persons

S. 42J
inserted by
No. 4/1997
s. 3.

42J. *Application of Division*

This Division applies to the appearance before a court of an accused person in a criminal

proceeding including a proceeding associated with, or ancillary to, or in consequence of, the prosecution for the offence¹².

42K. *Appearance of adult accused person before court*

S. 42K
inserted by
No. 4/1997
s. 3.

- (1) Unless the court otherwise directs, an accused person, other than a child, being held in custody who is required to appear, or be brought, before a court—
 - (a) in a proceeding with respect to bail not including a proceeding referred to in subsection (3); or
 - (b) having previously been remanded in custody, in a subsequent proceeding with respect to his or her remand in custody; or
 - (c) on a status hearing or committal mention hearing held in connection with a committal proceeding; or
 - (d) on an application for the adjournment of a proceeding; or
 - (e) for his or her arraignment on a day other than a day on which the trial is to take place—

is not required to appear, or be brought, physically before the court but may appear before it by audio visual link.

- (2) Unless the court otherwise directs, an accused person, other than a child, being held in custody who is required to appear, or be brought, before a court—
 - (a) on a committal proceeding; or
 - (b) on an inquiry into his or her fitness to stand trial; or

- (c) on the trial (apart from the arraignment of the accused person) or hearing of the charge; or
- (d) on a sentencing hearing; or
- (e) on an appeal arising out of that trial or hearing—

is required to appear, or be brought, physically before the court.

- (3) An accused person, other than a child, who has been taken into custody and who is required to be brought before a bail justice or the Magistrates' Court within a reasonable time of being taken into custody to be dealt with according to law is, if being brought before the Magistrates' Court, required to be brought physically before the court unless he or she consents to appear before the court by audio visual link.
- (4) In any proceeding to which this Division applies (other than one referred to in sub-section (1), (2) or (3)), a court may, on its own initiative or on the application of a party to the proceeding, direct that an accused person, other than a child, appear before it by audio visual link if it is satisfied that appearance by audio visual link is consistent with the interests of justice.

S. 42L
inserted by
No. 4/1997
s. 3.

42L. *Making of direction for physical appearance in section 42K(1) proceedings*

- (1) A court may direct that an accused person appear, or be brought, physically before it in a proceeding in which, by virtue of section 42K(1), physical appearance would not otherwise be required if it is satisfied, on an application made in accordance with this section, that—
 - (a) physical appearance is required in the interests of justice; or
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- (b) it is not reasonably practicable for the accused person to appear before the court by audio visual link.
- (2) An application for a direction referred to in sub-section (1) may be made by or on behalf of the accused person or the prosecution at any time up to 3 days before the day on which the accused person is due to appear or any shorter period before that day that is fixed by the court because of the existence of a good and sufficient reason.
- (3) An application is made by filing with the court a notice in the form (if any) prescribed by rules of court and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of court.
- (4) An application is to be determined by the court on the basis of the written application and any written submissions on the application filed with the court by any other party without giving the applicant or any other party an opportunity to be heard.
- (5) With leave of the court, an application for a direction referred to in sub-section (1) may be made by or on behalf of the accused person or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a party for such a direction has previously been refused by the court.
- (6) Sub-sections (3) and (4) do not apply to an application made in accordance with sub-section (5).
- (7) A court may also make a direction referred to in sub-section (1) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an
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application made in accordance with this section has previously been refused by it.

- (8) The exercise of the power conferred on a court to make a direction referred to in sub-section (1) is subject to any practice directions.

S. 42M
inserted by
No. 4/1997
s. 3.

42M. *Making of direction for audio visual appearance in section 42K(2) proceedings*

- (1) A court may direct that an accused person appear before it by audio visual link in a proceeding in which, by virtue of section 42K(2), physical appearance would otherwise be required if it is satisfied, on an application made in accordance with this section, that—
- (a) appearance by audio visual link is consistent with the interests of justice; and
 - (b) is reasonably practicable in the circumstances.
- (2) Unless an application for the making of a direction referred to in sub-section (1) is made with the consent of all parties to the proceeding, the court may only grant such an application if satisfied that exceptional circumstances exist.
- (3) An application for a direction referred to in sub-section (1) may be made by or on behalf of the accused person or the prosecution at any time up to 14 days before the day on which the accused person is due to appear or any shorter period before that day that is fixed by the court because of the existence of a good and sufficient reason.
- (4) An application is made by filing with the court a notice in the form (if any) prescribed by rules of court and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of court.

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- (5) With leave of the court, an application for a direction referred to in sub-section (1) may be made by or on behalf of the accused person or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a party for such a direction has previously been refused by the court.
 - (6) Sub-section (4) does not apply to an application made in accordance with sub-section (5).
 - (7) A court may also make a direction referred to in sub-section (1) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an application made in accordance with this section has previously been refused by it, if the court is satisfied that exceptional circumstances exist.
 - (8) Any victim of the offence which the accused person is alleged to have committed may address, or make a written submission to, the court in opposition to the making of a direction referred to in sub-section (1).
 - (9) The exercise of the power conferred on a court to make a direction referred to in sub-section (1) is subject to any practice directions.

42N. *Application for making of direction under section 42K(4)*

S. 42N
inserted by
No. 4/1997
s. 3.

- (1) An application for a direction referred to in section 42K(4) may be made by or on behalf of the accused person or the prosecution at any time up to 14 days before the day on which the accused person is due to appear or any shorter period before that day that is fixed by the court because of the existence of a good and sufficient reason.

- (2) An application is made by filing with the court a notice in the form (if any) prescribed by rules of court and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of court.
- (3) With leave of the court, an application for a direction referred to in section 42K(4) may be made by or on behalf of the accused person or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a party for such a direction has previously been refused by the court.
- (4) Sub-section (2) does not apply to an application made in accordance with sub-section (3).
- (5) A court may also make a direction referred to in section 42K(4) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an application made in accordance with this section has previously been refused by it.
- (6) The exercise of the power conferred on a court to make a direction referred to in section 42K(4) is subject to any practice directions.

S. 42O
inserted by
No. 4/1997
s. 3.

42O. *Appearance before court of an accused person who is a child*

Unless the court otherwise directs, an accused person who is—

- (a) a child; and
 - (b) being held in custody; and
 - (c) required to appear, or be brought, before a court in a proceeding to which this Division applies—
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is required to appear, or be brought, physically before the court.

42P. *Making of direction for audio visual appearance by child*

S. 42P
inserted by
No. 4/1997
s. 3.

- (1) A court may direct that a child referred to in section 42O appear before it by audio visual link if it is satisfied, on an application made in accordance with this section, that appearance by audio visual link is—
 - (a) consistent with the interests of justice; and
 - (b) reasonably practicable in the circumstances.
- (2) Unless an application for the making of a direction referred to in sub-section (1) is made with the consent of all parties to the proceeding, the court may only grant such an application if satisfied that exceptional circumstances exist.
- (3) An application for a direction referred to in sub-section (1) may be made by or on behalf of the child or the prosecution at any time up to 14 days before the day on which the child is due to appear or any shorter period before that day that is fixed by the court because of the existence of a good and sufficient reason.
- (4) An application is made by filing with the court a notice in the form (if any) prescribed by rules of court and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of court.
- (5) With leave of the court, an application for a direction referred to in sub-section (1) may be made by or on behalf of the child or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a

party for such a direction has previously been refused by the court.

- (6) Sub-section (4) does not apply to an application made in accordance with sub-section (5).
- (7) A court may also make a direction referred to in sub-section (1) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an application made in accordance with this section has previously been refused by it, if the court is satisfied that exceptional circumstances exist.
- (8) In determining whether the making of a direction referred to in sub-section (1) is consistent with the interests of justice, the court must take into consideration the effect of the direction on the child's ability—
 - (a) to comprehend the proceeding; and
 - (b) to communicate with his or her legal representative and give instructions, or express wishes, to that representative.
- (9) Any victim of the offence which the child is alleged to have committed may address, or make a written submission to, the court in opposition to the making of a direction referred to in sub-section (1)—
 - (a) on the trial (apart from the arraignment of the child) or hearing of the charge; or
 - (b) on a sentencing hearing.
- (10) The exercise of the power conferred on a court to make a direction referred to in sub-section (1) is subject to any practice directions.

42Q. Practice directions

- (1) The senior judicial officer of a court may from time to time issue practice directions, statements
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or notes relating to the exercise by the court of its discretion in relation to an application made in accordance with section 42L, 42M, 42N or 42P.

- (2) In this section, **senior judicial officer**—
- (a) in relation to the Supreme Court, means the Chief Justice;
 - (b) in relation to the County Court, means the Chief Judge;
 - (c) in relation to the Magistrates' Court or the Children's Court, means the Chief Magistrate.

42R. Requirements for audio visual appearance by accused

- (1) An accused person appearing before a court by audio visual link must do so from a place at which the technical requirements specified—
- (a) in section 42G(1), as modified by sub-section (2) of this section; and
 - (b) in sub-section (3)—
- are met.
- (2) Section 42G(1)(a)(i) applies as if the reference to the person appearing before the court or giving the evidence or making the submission included a reference to the accused person entering a plea to a charge or stating an intention to reserve their plea.
- (3) Both the court point and the remote point must be equipped with facilities that, in accordance with any rules of court, enable private communication to take place (at any time during the hearing or any adjournment of the hearing or at any time on the day of a hearing shortly before or after the hearing) between the accused person and any legal practitioner at the court point representing

S. 42R
inserted by
No. 4/1997
s. 3.

him or her in the proceeding and documents to be transmitted between both points by those persons.

S. 42S
inserted by
No. 4/1997
s. 3.

42S. *Protection of communication between accused and legal representative*

Without limiting any other protection applying to it, a communication by audio link or audio visual link, or a document transmitted, between an accused person and his or her legal representative in accordance with this Part is as confidential and as inadmissible in any proceeding as it would be if the communication took place or the document was produced while they were in each other's presence.

S. 42T
inserted by
No. 4/1997
s. 3.

42T. *Application of Listening Devices Act 1969*

The **Listening Devices Act 1969** applies to a communication by audio link or audio visual link, or a document transmitted, between an accused person and his or her legal representative in accordance with this Part as if—

- (a) the communication were a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and
 - (b) any data, text or visual images in the transmitted document were words spoken to or by a person in a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and
 - (c) references in that Act to the use of a listening device to overhear, record, monitor or listen to a private conversation included, in relation to a transmitted document, references to reading the document.
-

Division 4—General

42U. *Putting documents to a remote person*

- (1) If in the course of the examination of a person by audio visual link or audio link it is necessary to put a document to him or her, the presiding judge or magistrate may permit the document to be put to the person—
 - (a) if the document is at the court point, by transmitting a copy of it to the remote point by any means and the copy so transmitted being then put to the person; or
 - (b) if the document is at the remote point, by putting it to the person and then transmitting a copy of it to the court point by any means.
- (2) A document put to a person in accordance with sub-section (1) is admissible in evidence without proof that the transmitted copy is a true copy of the relevant document.
- (3) Nothing in this section prevents a document or exhibit being shown to a person over the audio visual link itself.

S. 42U
inserted by
No. 4/1997
s. 3.

42V. *Direction to jury in criminal trial*

If a court makes a direction under section 42E(1) in a criminal trial or an accused person appears before a court in a criminal trial by audio visual link in accordance with Division 3, the judge must warn the jury not to draw any inference adverse to the accused person or give any evidence given by the witness or the accused person any greater or lesser weight because of the making of the direction or the appearance by audio visual link.

S. 42V
inserted by
No. 4/1997
s. 3.

S. 42W
inserted by
No. 4/1997
s. 3.

42W. *Application of laws about witnesses, etc.*

- (1) The remote point must be taken to be part of the court point, and to be court premises within the meaning of the **Court Security Act 1980**, while a person is at the remote point for the purpose of appearing before, or giving evidence or making a submission to, the court in accordance with Division 2 or 3.
- (2) Sub-section (1) has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.
- (3) Sub-section (1) also has the effect that any offence committed at the remote point must be taken to have been committed at the court point for the purposes of the laws in force in Victoria.

S. 42X
inserted by
No. 4/1997
s. 3.

42X. *Arraignment*

An accused person who appears before a court for arraignment by audio visual link in accordance with Division 3 must be taken for all purposes to be at the bar of the court.

S. 42Y
inserted by
No. 4/1997
s. 3.

42Y. *Administration of oaths and affirmations*

An oath to be sworn or affirmation to be made by a witness who is to give evidence by audio visual link or audio link may be administered either—

- (a) by means of the audio visual link or audio link, in as nearly as practicable the same way as if the witness were to give evidence at the court point; or
- (b) at the direction of, and on behalf of, the court at the remote point by a person authorised by the court.

**PART III—PROOF OF DOCUMENTS AND OF FACTS BY
DOCUMENTS**

Division 1—Introductory

43. *Provisions to be additional*

No. 3674 s. 41.

Any provision of this Part as to proving documents and as to proving facts by documents shall be in addition to and not in derogation of any power of proving documents or of proving facts by documents given by any other provision of this or any other Act or existing at common law.

44. *Provisions relating to evidence apply to all persons acting judicially*

No. 3674 s. 42.

Whenever by this Act it is provided in effect that evidence or prima facie evidence may be given or may or shall be admissible such evidence or prima facie evidence may be given and shall be admissible before all courts and persons acting judicially.

45. *Copies admissible without further proof of sealing, signing etc.*

No. 3674 s. 43.

Whenever by this Act it is provided in effect that any certificate or any certified authenticated sealed stamped or signed copy may be given or shall or may be admissible in evidence the document purporting to be such certificate or copy except so far as is otherwise expressly provided may be given and shall be admissible in evidence without further proof and in particular without any proof of the judicial or official or other specified character of the person purporting to have attached or appended any seal stamp or signature and without any proof relating to any such seal

stamp or signature or any combination thereof or relating to the handwriting of any person.

No. 3674 s. 44.
S. 46
amended by
No. 8228
s. 2(2)(b)(c).

46. *Effect of copies same as original*

Whenever by this Act it is provided in effect that in lieu of an original document a copy or transcript of or extract from any document may be given or shall or may be admissible in evidence such copy transcript or extract may on compliance with the conditions (if any) prescribed be given and shall be admissible in evidence in the same circumstances to the same extent and for the like purposes as the original would be if produced and proved in due course of law and until it is proved not to be a true copy extract or transcript shall be of equal validity with the original without any proof of the truth of such copy transcript or extract. In the case of an extract all courts and persons acting judicially shall without further evidence be entitled to take into consideration the character of the original document from which such extract purports to be taken.

No. 3674 s. 45.

47. *No proof necessary that document printed by government printer*

Whenever by this Act it is provided in effect that a document printed by any government printer whether in Victoria or elsewhere may be given or shall or may be admissible in evidence such document if purporting to be printed by any such government printer may be given and shall be admissible in evidence without any proof that it was so printed.

Division 2—General

No. 3674 s. 46.

48. *British and foreign treaties may be proved by copies*

Prima facie evidence of all proclamations treaties and other Acts of State of any part of Her

Majesty's dominions or of any foreign State may be given by an examined copy or by a copy sealed with the seal of that part of Her Majesty's dominions or of the foreign State to which the original document belongs.

49. *British and foreign wills, judgments etc. may be proved by copies*

No. 3674 s. 47.

Prima facie evidence of all judgments decrees orders and other judicial proceedings of any court of justice in any part of such dominions or in any foreign State and all affidavits pleadings and other legal documents wills and codicils filed or deposited in any such court may be given by an examined copy or by a copy sealed with the seal of such court or (in case such court has no seal) signed by the judge or (if there are more judges than one) by any one of the judges of such court having thereon or attached thereto a statement in writing signed by such judge that the court whereof he is a judge has no seal without any proof of the truth of such statement.

50. *Mode of proving Royal proclamations Orders of Privy Council or rules etc. of Her Majesty's Imperial Government*

No. 3674 s. 48.

Prima facie evidence of any Royal Proclamation Order of Her Majesty's Privy Council order regulation despatch or any instrument whatsoever made or issued before or after the commencement of this Act by Her Majesty or by Her Majesty's Privy Council or by or under the authority of any of Her Majesty's secretaries of state or of any department of Her Majesty's Government in the United Kingdom may be given before all courts and persons acting judicially within Victoria by the production of a paper purporting to be a copy of the London Gazette or of the Government Gazette purporting to contain a reprint of such

proclamation order of the Privy Council order regulation despatch or other instrument as an extract from the London Gazette. In this section (but without affecting the generality of the expression when used elsewhere) the expression "**Her Majesty**" includes any predecessors of Her Majesty.

No. 3674 s. 49.

51. Documents admissible in England, Wales or Ireland without proof to be equally admissible in Victoria

Every document which by any law now in force or hereafter to be in force is admissible in evidence of any particular in any court of justice in England or Wales or Ireland without proof of the seal or stamp or signature authenticating the same or of the judicial or official character of the person appearing to have signed the same shall be admissible in evidence to the same extent and for the same purposes before all courts and persons acting judicially, without proof of the seal or stamp or signature authenticating the same or of the judicial or official character of the person appearing to have signed the same.

No. 3674 s. 50.

52. Register of vessels to be proved by original or copy

Every register of a vessel kept under any of the Acts now or hereafter to be in force relating to the registry of British vessels may be proved in any court or before any person acting judicially either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original. Every such register or such copy of a register, and also every certificate of registry granted under any of such Acts and purporting to be signed as required by law, shall be, in any court or before any person acting judicially prima facie evidence of all the matters contained or recited in such register when

the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in or indorsed on such certificate of registry when the said certificate is produced. Any person having charge of the original of the register is hereby required to furnish such certified copy to any person applying at a reasonable time for the same upon the payment of the sum of Ten cents (\$0.10).

A copy of a ship's articles and of the signatures thereto may be proved in any court or before any person acting judicially either by the production of the original or by an examined copy thereof and every such original or copy shall in any court or before any person acting judicially be prima facie evidence of all the matters contained or recited therein and of the signatures thereto.

Division 2A—Reproductions of Documents

Pt 3 Div. 2A
(Heading)
inserted by
No. 7324 s. 3.

53. Definitions

S. 53
substituted by
No. 7324 s. 3.

In this Division unless inconsistent with the context or subject-matter—

* * * * *

S. 53 def. of
"business"
repealed by
No. 8228
s. 2(2)(d).

"document" includes part of a document;

"machine-copy" in relation to a document means a copy made of the document by any machine wherein or process whereby an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive

material other than transparent photographic film;

"negative" in relation to a document means a transparent negative photograph used or intended to be used as a medium for reproducing the contents of the document and includes any transparent photograph made from surface contact with the original negative photograph;

"reproduction" in relation to a document means a machine-copy of the document or a print made from a negative of the document and **"to reproduce"** and any derivatives thereof shall have a corresponding interpretation.

S. 53A
inserted by
No. 7324 s. 3.

S. 53A(1)
amended by
Nos 8787
s. 33(a)(i)(ii),
9713
s. 55(a)(i)(ii),
substituted by
No. 10074
s. 7(a),
amended by
Nos 10231
s. 6(a)(b),
57/1989
s. 3(Sch. item
67.10),
No. 46/1998
s. 7(Sch. 1).

53A. *Certified reproductions of certain public documents admissible without further proof*

- (1) A reproduction of any document that is or at any time was in the custody or under the control of the holder of an office, declared before the commencement of section 6 of the **Evidence (Amendment) Act 1985** by Order of the Governor in Council published in the Government Gazette or, after the commencement of that Act, declared by the Secretary to the Department of Justice by notice published in the Government Gazette to be an office to which this section applies, shall, if the reproduction bears a certificate purporting to be signed by the holder of that office or by a person declared by such an order to be entitled to certify documents of that kind that it is a reproduction of that document, be admissible in evidence without further proof as if it were the document of which it is certified to be a reproduction.
- (2) A reproduction of any document at any time filed in any court or of the official record of any

proceedings in any court shall, if the reproduction bears a certificate purporting to be signed by the Prothonotary, Registrar or other proper officer of the Court that it is a reproduction of that document or record, be admissible in evidence without further proof as if it were the document or record of which it is certified to be a reproduction.

- (3) Where the holder of an office declared by Order of the Governor in Council published in the Government Gazette or by the Secretary to the Department of Justice by notice published in the Government Gazette to be an office to which this section applies or the Prothonotary, Registrar or proper officer of any court is served with legal process to produce a document or record in any court or before any person acting judicially it shall be a sufficient answer to such process if the person to whom the process is addressed sends by prepaid post or causes to be delivered to the Prothonotary, Registrar or proper officer of the court or person concerned a reproduction certified as aforesaid of the document or record.

S. 53A(3) amended by Nos 8787 s. 33(a)(iii), 9713 s. 55(b), 10074 s. 7(b), 10231 s. 6(c), 57/1989 s. 3(Sch. item 67.10), 46/1998 s. 7(Sch. 1).

53B. *Admissibility of reproductions of business documents destroyed, lost or unavailable*

S. 53B inserted by No. 7324 s. 3.

- (1) A reproduction of a document being a document made or used in the course of a business shall, subject to this Division, be admissible in any proceedings as evidence of that document upon proof that it is a reproduction made in good faith of the document and that the document has been destroyed or lost, whether wholly or in part, or that it is not reasonably practicable to produce the document or to secure its production.
- (2) Without prejudice to any other mode of proof an affidavit or declaration purporting to have been made by a person at or about the time he made a machine-copy or a negative of a document—

- (a) stating his full name, address and occupation;
- (b) identifying or describing the document;
- (c) stating the day upon which he made the machine-copy or negative, the condition of the document at that time with respect to legibility and the extent of any damage thereto;
- (d) describing the machine or process by which he made the machine-copy or negative; and
- (e) stating that the processing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition with the object of reproducing the document—

shall be evidence, whether such person is available to be called as a witness or not, that the machine-copy or negative was made in good faith and is, or can be used to produce, as the case may be, a reproduction of the document.

S. 53C
inserted by
No. 7324 s. 3.

53C. *Attorney-General may approve machines for micro-filming etc.*

- (1) For the purposes of this Division the Attorney-General may, by notice published in the Government Gazette, approve for micro-filming documents in the ordinary course of business any make, model or type of photographic copying machine (hereafter in this section called "an approved machine") if he is satisfied that the machine automatically photographs documents passed through it in normal operating conditions at a speed which will prevent interference by the operator with the course of copying a document.
 - (2) Any approval given by the Attorney-General under the last preceding sub-section may be given
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subject to a condition that the approved machine be used only with materials or types of materials specified in the notice in relation to the machine and may by the Attorney-General in the like manner be revoked or varied.

- (3) In addition to and without in any way derogating from the provisions of the last preceding section a reproduction made of a document, being a document made or used in the course of a business, from a negative made by an approved machine shall subject to this Division be admissible in any proceedings as evidence of the document, whether the document is still in existence or not, upon proof that the negative was made in good faith by means of such a machine and that the print reproduces the image on the negative.
- (4) Without prejudice to any other mode of proof an affidavit or declaration purporting to have been made by a person at or about the time he photographed a document by means of an approved machine—
- (a) stating his full name, address and occupation and his functions or duties (if any) in relation to copying documents;
 - (b) identifying or describing the document;
 - (c) stating the day upon which the document was photographed, the condition of the document at that time with respect to legibility and the extent of any damage to the document;
 - (d) stating the person or body from whose custody or control the document was produced for photographing or on whose behalf or in the course of whose business the document was photographed; and
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- (e) identifying the make model or type of the approved machine and stating that the photographing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition—

shall be evidence, whether such person is available to be called as a witness or not, that the negative referred to in the affidavit or declaration was made in good faith by means of an approved machine and bears an image of the document.

S. 53D
inserted by
No. 7324 s. 3.

53D. *Proof where document processed by independent processor*

Where a person having the custody or control of a document delivers or causes the document to be delivered to another person (hereafter in this section called "the processor") whose business is or includes the reproduction or photographing of documents for other persons and subsequently receives a machine-copy or negative of the document from the processor together with an affidavit or declaration made by the processor as to the making of the machine-copy or negative an affidavit or declaration made by such first-mentioned person at or about that time as to his custody or control of the document, its delivery to and return by the processor and his subsequent disposal of the document and the machine-copy or negative shall be admissible as evidence of the facts stated therein whether such first-mentioned person is available to be called as a witness or not.

S. 53E
inserted by
No. 7324 s. 3.

53E. *Affidavit or declaration of maker of print from micro-film etc. to be evidence*

Without prejudice to any other mode of proof an affidavit or declaration purporting to have been

made by a person at or about the time he made a print from a negative of a document—

- (a) stating his full name, address and occupation;
- (b) identifying the negative;
- (c) stating the day upon which the print was made, the condition of the negative and the extent of any damage thereto;
- (d) describing the process or procedure by which he made the print; and
- (e) stating that the printing was properly carried out by the use of apparatus and materials in good working order and condition with the object of reproducing the whole of the image on the negative—

shall be evidence, whether such person is available to be called as a witness or not, that the print reproduces the whole of the image on the negative.

53F. *Proof of destruction of documents etc.*

S. 53F
inserted by
No. 7324 s. 3.

A statement by any person in an affidavit or declaration made for the purposes of this Division—

- (a) that he destroyed or caused the destruction of a document;
- (b) that a negative is in the custody or control of a person corporation or body referred to in sub-section (3) of section 53J; or
- (c) that a document came into existence or was used in the course of his or his employer's business—

shall be evidence of the fact or facts stated.

s. 53H

S. 53G
inserted by
No. 7324 s. 3.

53G. *Certified copy of affidavit or declaration to be admissible*

Unless the court or person acting judicially otherwise orders a copy of an affidavit or declaration made for the purposes of this Division duly certified to be a true copy—

- (a) in the case of an affidavit or declaration in the custody of a body corporate—by the chairman, secretary, or by a director or manager thereof; or
- (b) in any other case—by a person authorised by this Act to take affidavits or to witness the signing of declarations—

S. 53G(b)
amended by
No. 57/1989
s. 3(Sch. item
67.11).

shall be admissible in evidence in lieu of the original affidavit or declaration.

S. 53H
inserted by
No. 7324 s. 3.

53H. *One affidavit or declaration sufficient where series of documents copied*

- (1) Where documents are numbered in regular arithmetical series and photographed in the order in which they are so numbered so as to be recorded on a continuous length of film as a series of negatives one affidavit or declaration may be made for the purposes of this Division relating to all the negatives on the length of film and it shall be a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents in the series and the serial numbers of the first and last documents recorded on the film.
- (2) Where documents bear a distinctive identification mark and are so photographed that the film produced records only the images of documents bearing that mark one affidavit or declaration may be made for the purposes of this Division relating

to all the documents recorded on that film and it shall be a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents recorded on the film and describes the common identification mark.

- (3) Where documents purport from their contents to relate to the same subject-matter, to the same person or persons, or to a matter between persons it shall be a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents and describes them as the documents relating to the subject-matter, the person or persons or the matter between the persons, as the case may be.
- (4) For the purposes of this section where one of the images appearing on a length of film is the image of a statement signed by the person who photographed the documents recorded on the film the statement shall be deemed, in the absence of anything in the statement to the contrary, to relate to all the images on that length of film.

53J. Reproductions not to be admitted as evidence unless negative in existence etc.

S. 53J
inserted by
No. 7324 s. 3.

- (1) Save as provided in sub-section (2) and sub-section (3) a reproduction made through the medium of a negative shall not be admitted as evidence pursuant to the provisions of this Division in any proceedings unless the court or person acting judicially is satisfied—
- (a) that the negative is in existence at the time of the proceedings; and
- (b) that the document reproduced was—

- (i) in existence for a period of not less than twelve months after the document was made; or
 - (ii) was delivered or sent by the party tendering the reproduction to the other party or one of the other parties to the proceedings.
- (2) The provisions of sub-section (1) shall not apply with respect to any reproduction referred to in section 53A.
- (3) The provisions of paragraph (b) of sub-section (1) shall not apply with respect to a reproduction made from a negative made by an approved machine within the meaning of section 53C where at the time the print was made the negative was in the custody or control of—
 - (a) a Minister of the Crown in right of the Commonwealth or of the State of Victoria or of any other State of the Commonwealth or any officer in any Government Department under the direct control of any such Minister;
 - (b) any officer or any board, commission, trust or other body corporate or unincorporate (including a municipal council) established or constituted by or under the law of the Commonwealth or of the State of Victoria or of a Territory of the Commonwealth for any public purpose;
 - (c) a bank as defined in section 5 of the Banking Act 1959 of the Commonwealth as amended from time to time or any statutory corporation for the time being authorized to carry on any banking business in the State of Victoria or in any other State or a Territory of the Commonwealth; or

S. 53J(3)(b)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 41.1).

(d) any public company within the meaning of the **Companies (Victoria) Code** (including a corporation that is a public company under the law of another State or of a Territory of the Commonwealth and is a recognized foreign company under that Code) that is registered under the Life Insurance Act 1945 of the Commonwealth as in force for the time being where the document in question relates to the life insurance business of that company.

S. 53J(3)(d)
substituted by
No. 9699 s. 23.

(4) Where a reproduction made through the medium of a negative is admitted as evidence pursuant to the provisions of this Division in any proceedings the court or person acting judicially may at any time order a further reproduction to be made from the negative in the presence of a person appointed for the purpose by the court or person acting judicially.

53K. *Changes in colour or tone*

A reproduction of a document may be taken to be a reproduction of the document notwithstanding that the colour or tone of any writing printing or representation on the document is reversed or altered in the reproduction or, in the case of a reproduction certified under sub-section (1) of section 53A, that any colour appearing in the document or any representation not reproduced by reason of its colour was added to the reproduction before the reproduction was certified.

S. 53K
inserted by
No. 7324 s. 3.

53L. *Notice to produce not required*

(1) A reproduction of a document may be admitted in evidence in any court or before any person acting judicially without any notice to produce the original document.

S. 53L
inserted by
No. 7324 s. 3.

- (2) Where a reproduction is tendered as evidence no proof shall be required that the reproduction was compared with the original document.

S. 53M
inserted by
No. 7324 s. 3.

53M. *Presumptions as to ancient documents*

Any presumption that may be made in respect of a document over twenty years old may be made with respect to any reproduction of that document admitted in evidence under this Division in all respects as if the reproduction were the document.

S. 53N
inserted by
No. 7324 s. 3.

53N. *Reproductions made in other States etc.*

Where a reproduction is made of a document in another State or in a Territory of the Commonwealth and would be admissible in evidence in that State or Territory under the law of that State or Territory under provisions corresponding with this Division the reproduction shall be admissible in evidence in Victoria in the same circumstances, to the same extent and for the like purposes as it would be admissible in evidence in that State or Territory under the law of that State or Territory.

S. 53P
inserted by
No. 7324 s. 3.

53P. *Judicial notice*

Where any Act or law requires a court or person acting judicially to take judicial notice of the seal or signature of any court, person or body corporate appearing on a document and a reproduction of that document is admitted in evidence pursuant to the provisions of this Division in any proceedings the court or person acting judicially shall take judicial notice of the

image of the seal or signature on the reproduction to the same extent as it would be required to take judicial notice of the seal or signature on the document.

53Q. *Micro-film etc. may be preserved in lieu of document*

S. 53Q
inserted by
No. 7324 s. 3.

Unless the application of this section is expressly excluded where any Act, law or duty requires a document to be preserved or kept for any purpose for a longer period of time than three years it shall be a sufficient compliance with such requirement to preserve or keep, in lieu of any such document over three years old, a negative thereof made by means of an approved machine within the meaning of section 53C together with an affidavit or declaration in accordance with sub-section (4) of the said section referring to the negative.

53R. *Factors determining admissibility*

S. 53R
inserted by
No. 7324 s. 3.

For the purpose of deciding whether or not a reproduction of a document is admissible as evidence of the document under the foregoing provisions of this Division the court or person acting judicially may draw any reasonable inference from the nature of the reproduction, the machine or process used in making the reproduction or the negative from which it was produced or from any other circumstances and may reject the reproduction, notwithstanding that the requirements of this Division are satisfied with respect thereto, if for any reason it appears inexpedient in the interests of justice that the reproduction should be admitted in evidence.

53S. *Estimation of importance of reproduction rendered admissible*

S. 53S
inserted by
No. 7324 s. 3.

In estimating the weight to be attached to a reproduction rendered admissible as evidence by this Division regard shall be had to the fact that if

the person making an affidavit or declaration is not called as a witness there has been no opportunity to cross-examine him and to all the circumstances from which any inference can reasonably be drawn as to—

- (a) the necessity for making the reproduction or negative or for destroying or parting with the document;
- (b) the accuracy or otherwise of the reproduction; and
- (c) any incentive to tamper with the document or to misrepresent the reproduction.

S. 53T
inserted by
No. 7324 s. 3.

53T. *Interpretation of provisions of this Division*

The provisions of this Division shall be construed as in aid of and not in derogation from any other law or any practice or usage with respect to the admissibility as evidence of reproductions of documents.

Division 3—Admissibility and Effect of Documentary Evidence

S. 54
substituted by
No. 8228 s. 3.

54. *Saving*

Nothing in this Division shall—

- (a) prejudice the admissibility of any evidence which would apart from the provisions of this Division be admissible; or
- (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Division had not passed.

55. *Admissibility of documentary evidence as to facts in issue*

S. 55
amended by
No. 8181
s. 2(1)(Sch.
item 44),
substituted by
No. 8228 s. 3.

- (1) In any legal proceeding (not being a criminal proceeding) where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall be admissible as evidence of that fact if—
 - (a) the maker of the statement had at the time of the making of the statement personal knowledge of the matters dealt with by the statement, and is called as a witness in the proceeding; or
 - (b) the document is, or forms part of, a record relating to any business and made in the course of that business from information supplied (whether directly or indirectly) by persons who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the information they supplied, and the person who supplied the information recorded in the statement in question is called as a witness in the proceeding.
- (2) In any criminal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall be admissible as evidence of that fact if the document is, or forms part of, a record relating to any business and made in the course of that business from information supplied (whether directly or indirectly) by persons who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the information they supplied, and the person who supplied the information recorded in the statement in question is called as a witness in the proceeding.

U.K. 1965
s. 1(1)(a).

- (3) Sub-section (2) does not make a statement contained in a document admissible in any criminal proceeding if the statement was made in the course of or for the purposes of—
- (a) the investigation of facts constituting or being constituents of the alleged offence being dealt with in the proceeding;
 - (b) an investigation which led to the discovery of facts constituting or being constituents of the alleged offence;
 - (c) the preparation of a defence to a charge for any offence; or
 - (d) the preparation of the case for the prosecution in respect of any offence.
- (4) Nothing in this section shall render admissible as evidence in any legal proceedings any statement made by a person interested at a time when the proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.
- (5) Notwithstanding anything to the contrary in the foregoing provisions of this section, the condition that the maker of the statement or the person who supplied the information, as the case may be, be called as a witness need not be satisfied where—
- (a) he is dead, or unfit by reason of his bodily or mental condition to attend or testify as a witness;
 - (b) he is out of Victoria and it is not reasonably practicable to secure his attendance;
 - (c) he cannot with reasonable diligence be found or identified;
 - (d) no party to the proceeding requires the attendance of the witness; or
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Act No. 6246/1958

- (e) the parties to the proceedings consent to his not being required to attend.
- (6) Notwithstanding anything to the contrary in paragraph (b) of sub-section (1) or in sub-section (2) the condition that the person who supplied the information be called as the witness need not be satisfied where it cannot reasonably be supposed (having regard to the time which has elapsed since he supplied the information and to all the circumstances) that he would have any recollection of the matters dealt with in the information he supplied.
- (7) The court may at any stage of the proceeding, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in sub-section (1) or sub-section (2) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence, notwithstanding that the maker of the statement or the person who supplied the information (as the case may be) is available but is not called as a witness.
- (8) In deciding whether or not a person is fit to attend or to testify as a witness, the court may act on a certificate purporting to be a certificate of a registered medical practitioner within the meaning of the **Medical Practice Act 1994**.
- (9) The court may in its discretion reject any statement or defer the admission of and subsequently reject any statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be then admitted or, as the case requires, should be admitted at all.

S. 55(8)
amended by
No. 23/1994
s. 118(Sch. 1
item 20.1).

U.K. 1968 s. 7.
S. 55A
inserted by
No. 8228 s. 3.

55A. Admissibility of evidence concerning credibility of person responsible for statement

- (1) Where in any legal proceeding a statement is given in evidence by virtue of section 55, but the person who made the statement or supplied the information recorded in it is not called as a witness in the proceeding—
- (a) any evidence which, if that person had been so called would be admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose in those proceedings;
 - (b) any evidence tending to prove that, whether before or after he made that statement or supplied that information, he made another statement or supplied other information (whether orally or in a document or otherwise) inconsistent therewith shall be admissible for the purpose of showing that he has contradicted himself—

but nothing in paragraphs (a) or (b) shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

- (2) Where in any legal proceeding a statement is given in evidence by virtue of section 55, but the person who made the statement or supplied the information recorded in it is not called as a witness in the proceeding any evidence proving that that person has been guilty of any indictable or other offence shall be admissible in the proceedings to the same extent as if that person had been so called and on being questioned as to whether he had been convicted of an indictable or

other offence had denied the fact or refused to answer the question.

55AB. *Certain depositions may be used at trial*

**S. 55AB
inserted by
No. 51/1989
s. 144(2)(a).**

- (1) In this section—
- (a) "**deposition**" includes—
- (i) any statements admitted in evidence at a committal proceeding in accordance with Schedule 5 to the **Magistrates' Court Act 1989**; and
 - (ii) any deposition taken by a coroner under section 15 of the **Coroners Act 1958** or section 57 of the **Coroners Act 1985**; and
- (b) "**magistrate**" includes a coroner appointed under the **Coroners Act 1985**.
- (2) If on the trial of a person for an offence it appears to the Court—
- (a) that any person whose deposition was taken before the Magistrates' Court—
- (i) is refusing to be sworn or give evidence; or
 - (ii) is dead; or
 - (iii) is out of Victoria; or
 - (iv) is so ill as not to be able to travel; or
 - (v) cannot, after diligent search, be found; or
 - (vi) has become mentally ill; or
 - (vii) is keeping or being kept out of the way to avoid giving evidence; or
 - (viii) is incapable of giving evidence; and
- (b) that the deposition—

S. 55AB
(2)(b)(i)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.3).

- (i) was taken in the presence of the person being tried, and that the person being tried or his or her legal practitioner had a full opportunity of cross-examining the witness or, if the deposition is that of a witness called by or on behalf of the person being tried, that the informant or prosecutor or his or her legal practitioner had a full opportunity of cross-examining the witness; and
- (ii) purports to be certified as correct by the licensed shorthand writer or person appointed to record the deposition (as the case requires)—

the deposition and any exhibits mentioned in it may be used as evidence in the trial without further proof unless it is proved that the deposition was not in fact certified by the person purporting to have certified it.

- (3) If a deposition is used as evidence in a trial the deposition is, under like circumstances, admissible in any subsequent trial of the same person on the same charge.

U.K. 1968
s 5(1).

S. 55B
inserted by
No. 8228 s. 3.

55B. *Admissibility of statements produced by computers*

- (1) In any legal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document produced by a computer and tending to establish that fact shall be admissible as evidence of that fact, if it is shown that the conditions mentioned in sub-section (2) are satisfied in relation to the statement and computer in question.
- (2) The said conditions are—
 - (a) that the document containing the statement was produced by the computer during a

U.K. 1968
s. 5(2).

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- period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person;
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
 - (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
 - (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub-section (2) was regularly performed by computers, whether—
- (a) by a combination of computers operating over that period; or
 - (b) by different computers operating in succession over that period; or
 - (c) by different combinations of computers operating in succession over that period; or
 - (d) in any other manner involving the successive operation over that period, in whatever order,

**U.K. 1968
s. 5(3).**

of one or more computers and one or more combinations of computers—

all the computers used for that purpose during that period shall be treated for the purposes of this Division as constituting a single computer; and references in this Division to a computer shall be construed accordingly.

U.K. 1968
s. 5(4).

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate—

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

U.K. 1968
s. 6(5).
S. 55B(5)
amended by
No. 9576
s. 11(1).

(5) Any person who in a certificate tendered in evidence by virtue of sub-section (4) wilfully makes a statement material in those proceedings

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which he knows to be false or does not believe to be true, shall be guilty of an indictable offence.

Penalty: Imprisonment for not more than two years or a fine or both.

(6) For the purposes of this Division—

U.K. 1968
s. 5(5).

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) where, in the course of activities carried on by any person, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(7) The court may in its discretion reject any statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(8) Subject to sub-section (3), in this section "**computer**" means any device for storing or processing information, and any reference to information being derived from other information

U.K. 1968
s. 5(6).

is a reference to its being derived therefrom by calculation, comparison or any other process.

U.K. 1968
s. 6(2).
S. 55C
inserted by
No. 8228 s. 3.

55C. *Whether a statement is admissible*

For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 55 or section 55B, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances.

U.K. 1968
s. 6(1).
S. 55D
inserted by
No. 8228 s. 3.

55D. *Where a statement is to be given in evidence*

Where in any civil or criminal proceeding a statement contained in a document is proposed to be given in evidence by virtue of section 55 or section 55B it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or the material part thereof, authenticated in such manner as the court may approve.

S. 56
substituted by
No. 8228 s. 3.

56. *As to effect of Division on rules requiring corroboration*

For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Division shall not be treated as corroboration of evidence given by the maker of the statement or the person who supplied the information from which the record containing the statement was made.

No. 5183 s. 5.
S. 57
amended by
No. 6505 s. 2.

57. *Proof of instrument to validity of which attestation is necessary*

Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is

requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

58. *Presumptions as to documents twenty years old*

No. 5183 s. 6.

In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Division would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

Division 3A—Books of Account

Pt 3 Div. 3A
(Heading and
ss 58A–58J)
inserted by
No. 8228 s. 4.

58A. *Definitions*

S. 58A
inserted by
No. 8228 s. 4.

In this Division unless inconsistent with the context or subject-matter—

"bank" means any person lawfully carrying on the business of banker;

S. 58A def. of
"bank"
amended by
Nos 29/1988
s. 57(6),
94/1990
s. 40(5).

"book of account" includes ledger, day book, cash book, account book, and any other document used in the ordinary business of a bank, or in the ordinary course of any other business for recording the financial

transactions of the business and also includes any document used in the ordinary course of any business to record goods produced in, or stock in trade held for, the business;

S. 58A def. of "court" amended by Nos 16/1986 s. 30, 110/1986 s. 140(2), 19/1989 s. 16(Sch. item 21.1), 57/1989 s. 3(Sch. item 67.12).

"court" means—

- (a) in relation to any legal proceeding in the Supreme Court, the Supreme Court;
- (b) in relation to any legal proceeding in the County Court, the County Court;
- (c) in relation to any legal proceeding in the Magistrates' Court, the Magistrates' Court; and
- (d) in relation to any other legal proceeding the Supreme Court.

S. 58B inserted by No. 8228 s. 4, amended by No. 10231 s. 7.

58B. *Entries in book of account to be evidence*

Subject to the provisions of this Division in all legal proceedings—

- (a) an entry in a book of account shall be prima facie evidence of the matters transactions and accounts therein recorded; and
- (b) a copy of an entry in a book of account shall be prima facie evidence of the entry and of the matters transactions and accounts therein recorded; and
- (c) where in the ordinary course of business a copy of the original book of account has been made and retained as the ordinary book of account, and the original book of account has been destroyed, then an entry in the copy book of account shall be prima facie evidence of the matters transactions and accounts therein recorded.

S. 58B(c) inserted by No. 10231 s. 7.

S. 58C inserted by No. 8228 s. 4.

58C. *Where person in business party to proceedings, other party entitled to inspect etc. books of account*

Where a person carrying on any business is a party to any legal proceeding the other party or parties thereto shall be at liberty to inspect and make copies of or extracts from the original entries and the accounts of which such entries form a part and the documents in respect of which such entries were made.

58D. *Proof that book is a book of account*

S. 58D
inserted by
No. 8228 s. 4.

(1) An entry or a copy of an entry in a book of account shall not be admissible in evidence under this Division unless it is first proved that the book was at the time of the making of the entry one of the ordinary books of account of the business to which it purports to relate and that the entry was made in the usual and ordinary course of that business.

(2) Such proof may be given by a responsible person familiar with the books of account of the business and may be given orally, by an affidavit sworn before a person authorised by this Act to take affidavits or by a declaration signed before a person authorised by this Act to witness the signing of declarations.

S. 58D(2)
amended by
No. 57/1989
s. 3(Sch. item
67.13).

58E. *Verification of copy*

S. 58E
inserted by
No. 8228 s. 4.

(1) A copy of an entry in a book of account shall not be admissible evidence under this Division unless it is further proved that the copy has been examined with the original entry and is correct.

(2) Such proof shall be given by some person who has examined the copy with the original entry and may be given either orally, by an affidavit sworn before a person authorised by this Act to take affidavits or by a declaration signed before a person authorised by this Act to witness the signing of declarations.

S. 58E(2)
amended by
No. 57/1989
s. 3(Sch. item
67.13).

s. 58F

S. 58F
inserted by
No. 8228 s. 4,
amended by
No. 57/1989
s. 3(Sch. item
67.14).

58F. *Matters which may be proved under this Division ordinarily to be so proved*

A person carrying on any business or an employé of that person shall not in any legal proceeding to which the person is not a party be compellable to produce any book of account the contents of which can be proved under this Division or to appear as a witness to prove the matters transactions and accounts therein recorded unless by order of a court made for special cause.

S. 58G
inserted by
No. 8228 s. 4.

58G. *Court may order that books of account or copies be made available*

- (1) On the application of any party to a legal proceeding a court may order that such party be at liberty to inspect and take copies of any entries in a book of account of any business for any of the purposes of such proceeding and may order that the person carrying on the business shall free of charge for the first ten folios and on payment of Twenty cents (\$0.20) for each additional folio prepare and deliver to such party a duly verified copy of such entries as may be required for evidence in such legal proceeding.
- (2) An order under this section may be made either with or without summoning the person carrying on the business or any other party and shall be served on the person carrying on the business three clear days before the same is to be obeyed unless the court otherwise directs.

S. 58H
inserted by
No. 8228 s. 4.

58H. *Costs of application*

- (1) The costs of any application to a court under or for the purposes of this Division and the costs of anything done or to be done under an order of a court made under or for the purposes of this Division shall be in the discretion of the court who may order the same or any part thereof to be

paid to any party by the person carrying on the business concerned where the same have been occasioned by any default or delay on the part of that person.

- (2) Any such order against a person carrying on any business may be enforced as if he was a party to the proceeding.

58I. Application of sections 58B, 58D and 58E

Sections 58B, 58D and 58E shall apply to and in relation to books of account and persons carrying on business in any State or Territory of the Commonwealth.

S. 58I
inserted by
No. 8228 s. 4.

58J. Computation of time

Sunday, Christmas Day, Good Friday and any bank holiday shall be excluded from the computation of time under this Division.

S. 58J
inserted by
No. 8228 s. 4.

Division 4—Further Provisions Relating to Australasian Documents

59. Definitions

No. 3674 s. 52.

In this Division and Division six of this Part unless inconsistent with the context or subject-matter—

"Act" includes any Act of Council and Ordinance of the Legislature of any Australasian State;

"Australasian State" includes the Commonwealth of Australia and its dependencies and the States Dominions Colonies or Provinces (including their respective dependencies) of Fiji New South Wales New Zealand Queensland South Australia Tasmania Victoria and Western Australia by whatever name such as State Dominion Colony or Province any of them

was or is for the time being called and also includes any British possession which may at any time be created in Her Majesty's possessions in Australasia and also includes any part of New Zealand during such time as such part constituted a separate Colony or Province;

"Government Gazette" means the Government Gazette, Royal Gazette, or other official gazette of any Australasian State;

"government printer" means and includes any printer purporting to have been or to be the printer authorized to print the Statutes Ordinances Acts of Council Acts of State or other public Acts of the Legislature of any Australasian State or otherwise to be the government printer of such State;

"Governor" means the person for the time being administering the Government of any Australasian State; and

"votes and proceedings" include any papers printed or purporting to be printed by the authority of and laid before or purporting to be laid at any time before any House or Houses of Legislature of any Australasian State.

No. 3674 s. 53.

60. *Votes and proceedings of Legislature of any Australasian State proved by copy*

All documents, whether made before or after the commencement of this Act, purporting to be copies of the votes and proceedings of any House of the Legislature of any Australasian State printed by the government printer of the State to which they belong or relate shall on the mere production of the same be admissible as evidence

thereof before all courts and persons acting judicially within Victoria.

61. *Royal proclamation in Australasian State proved by copy*

No. 3674 s. 54.

All documents whether made before or after the commencement of this Act purporting to be copies of Royal proclamations printed by the government printer of any Australasian State shall on the mere production of the same be admissible before all courts and persons acting judicially within Victoria as evidence of such proclamation having on the date (if any) therein indicated been made in and in relation to such State.

62. *Proof of Government Gazette*

No. 3674 s. 55.

- (1) The mere production of a paper purporting to be the Government Gazette of any Australasian State shall be prima facie evidence that such paper is such Government Gazette and that it was published in such State on the day on which the same bears date.
- (2) The mere production of a paper purporting to be printed by the government printer of any Australasian State or by the authority of the Government of any such State shall be prima facie evidence that such paper was printed by such government printer or by such authority.

63. *Mode of proving proclamations etc. of Governor or Ministers of the Crown of Australasian State*

No. 3674 s. 56.

Prima facie evidence of any proclamation order in council order regulation or other instrument whatsoever made or issued before or after the commencement of this Act by the Governor or by the Governor in Council of any Australasian State, also of any order regulation or instrument whatsoever made or issued before or after the

commencement of this Act by or under the authority of any responsible Minister of the Crown or of any public commission or board in any such State may be given in all or any of the modes hereinafter mentioned (that is to say)—

- (a) by the production of a copy of the Government Gazette of such State purporting to contain such proclamation order in council order regulation or other instrument;
- (b) by the production of a document purporting to be a copy of such proclamation order in council order regulation or other instrument printed by the government printer of such State;
- (c) by the production in the case of any proclamation order in council order regulation or instrument whatsoever made or issued by the Governor or by the Governor in Council of any Australasian State of a copy or extract certified to be true by the clerk of the Executive Council of such State, and in the case of any order regulation or instrument whatsoever made or issued by or under the authority of any responsible Minister of the Crown by the production of a copy or extract certified to be true by the aforesaid Minister or any other responsible Minister of the Crown in such State.

No. 3674 s. 57.

64. *Government Gazette to be evidence of acts of Governor, Ministers etc.*

Where by any law at any time in force in any Australasian State the Governor or the Governor in Council or any responsible Minister of the Crown in any such State was or is authorized or empowered to do any act whatsoever any

Government Gazette purporting to contain a copy or notification of any such act shall be prima facie evidence of any such act having been duly done, and if any such Gazette purports to contain any order rule regulation by-law matter or thing allowed confirmed cancelled approved of consented to or certified by the Governor or by the Governor in Council or by any such responsible Minister in accordance with any such law shall also be prima facie evidence of the purport and due making of such order rule regulation by-law matter or thing.

65. *Proof of certain public and corporation documents*

No. 3674 s. 58.

- (1) Where by any Act of any Australasian State at any time in force—
- (a) any certificate official or public document; or
 - (b) any record required by law to be kept of any public document or proceeding; or
 - (c) any document or proceeding of any corporation or company; or
 - (d) any certified copy of any document or by-law or entry in any register or any other book or of any other proceeding—

is admissible in evidence of any particular under such Act in the particular State the same shall respectively be admissible in evidence to the same extent and for the same purposes before all courts and persons acting judicially within Victoria provided they respectively purport to be sealed or impressed with a stamp or sealed and signed or impressed with a stamp and signed or signed alone as directed by such Act of the particular Australasian State without any proof of such seal stamp or signature or of the official character of

the person appearing to have signed the same and without any further proof thereof.

- (2) Where by any Act of any Australasian State at any time in force power to make by-laws or regulations is conferred upon any person or body any printed paper purporting to contain or to be a copy of such by-laws or regulations and to be printed by the government printer of such State or by the authority of the government of such State shall be prima facie evidence—
- (a) that by-laws or regulations in the words printed in such paper were duly made by such person or body; and
 - (b) that such by-laws or regulations have been approved of or confirmed by the Governor or Governor in Council of such State if such approval or confirmation is necessary and they appear by such paper to have been so approved of or confirmed.

No. 3674 s. 59.

66. *Documents admissible in Australasian States without proof to be equally admissible in Victoria*

Every document which by any law at any time in force in any Australasian State other than Victoria is admissible in evidence of any particular in any court of justice in such first-mentioned State without proof of the seal or stamp or signature authenticating the same or of the judicial or official character of the person appearing to have signed the same shall be admissible in evidence to the same extent and for the same purposes before all courts and persons acting judicially within Victoria without proof of the seal or stamp or signature authenticating the same or of the judicial or official character of the person appearing to have signed the same.

**67. Documents of Australasian State which if Victorian
admissible on mere production provable by certified
copy**

Nos 3674
s. 60, 6012
s. 6(1).
S. 67
amended by
Nos 8228
s. 2(2)(e)(f),
10074
s. 8(a)(b).

- (1) Whenever any document is of such a public nature that being a Victorian document it is admissible in evidence on its mere production from the proper custody or that being a document of some Australasian State other than Victoria it would if it were a Victorian document be admissible in evidence on its mere production from the proper custody any copy thereof or extract therefrom shall be admissible in evidence before all courts and persons acting judicially within Victoria provided it is proved to be an examined copy or extract or purports to be signed and certified as a true copy or extract by some officer of the State in question, who further purports to certify thereto that he is the officer to whose custody the original is intrusted. Any such officer in Victoria is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of the prescribed fee.
- (2) The Governor in Council may make regulations prescribing fees for the purposes of sub-section (1).

S. 67(2)
inserted by
No. 10074
s. 8(c).

68. Incorporation of any company how authenticated

Prima facie evidence of the incorporation of a company incorporated or registered in any Australasian State other than Victoria either before or after the commencement of this Act may be given by a certificate of the incorporation or registration thereof which purports to be signed by a person holding in that State an office corresponding to the office of Commissioner for Corporate Affairs or Deputy or Assistant Commissioner for Corporate Affairs or which purports to be signed by a person whose authority

No. 3674 s. 61.
S. 68
amended by
Nos 8565
s. 24(9),
57/1989
s. 3(Sch. item
67.15).

to give the same purports to be verified by a statutory declaration made before any judge, magistrate or justice of the peace of such State and the date of incorporation or registration mentioned in such certificate shall be prima facie evidence of the date on which the company was incorporated or registered.

No. 3674 s. 62.

S. 69
amended by
No. 8565
s. 24(9),
substituted by
No. 8787
s. 33(b).

69. *Copies of documents relating to companies*

S. 69(1)
amended by
No. 9699 s. 23.

- (1) Any document purporting to be a copy of or extract from any document kept and registered at the office for the registration of companies in any Australasian State or of or from a transparency (within the meaning of the **Companies (Victoria) Code**) of a document that has been kept and registered at any such office, if certified under the hand of the registrar or an assistant or a deputy registrar shall be admissible in evidence in all cases in which the original document is admissible in evidence and for the same purpose and to the same extent.
- (2) A reference in sub-section (1) to the registrar or an assistant or a deputy registrar shall be construed—

S. 69(2)(a)
amended by
No. 9698
s. 14(6)(a)(b).

- (a) as including a reference to the Corporate Affairs Commission of the State of New South Wales or South Australia or to a Commissioner of or for Corporate Affairs, an Assistant Commissioner of or for Corporate Affairs or a Deputy Commissioner of or for Corporate Affairs of the State of New South

Wales, Queensland, South Australia,
Western Australia or Tasmania; and

- (b) as including a reference to a person holding within the office for the registration of companies in any Australasian State an office which corresponds to the office of Commissioner for Corporate Affairs or Deputy Commissioner for Corporate Affairs or Assistant Commissioner for Corporate Affairs under the **Companies (Administration) Act 1981**.

S. 69(2)(b)
amended by
No. 9698
s. 14(6)(c).

Division 5—Further Provisions Relating to Victorian Documents

70. *Mode of proving proclamations, orders and regulations of Board of Land and Works*

Prima facie evidence of any proclamation order or regulation issued before the commencement of the **Public Lands and Works Act 1964** by or under the authority of the Board of Land and Works may be given in all or any of the modes hereinafter mentioned, that is to say—

- (a) by the production of a copy of the Government Gazette purporting to contain such proclamation order or regulation;
- (b) by the production of a document purporting to be a copy of such proclamation order or regulation printed by the government printer;
- (c) by the production of a copy thereof or extract therefrom purporting to be under the seal of the Board and to be attested by the President or Vice-President of the Board.

No. 3674 s. 63.
S. 70
amended by
No. 7228
s. 7(Sch. 4
Pt 9).

No. 3674 s. 64.
S. 71
amended by
No. 7228
s. 7(Sch. 4
Pt 9).

71. *Government Gazette to be evidence of act of Board of Land and Works*

Where by any law in force before the commencement of the **Public Lands and Works Act 1964** the Board of Land and Works was authorized or empowered to do any act whatsoever any Government Gazette purporting to contain a copy or notification of any such act shall be prima facie evidence of such act having been duly done.

No. 3674 s. 65.
S. 72
amended by
No. 7228
s. 7(Sch. 4
Pt 9),
substituted by
No. 10231 s. 8.

72. *Certified copies of certain maps and documents to be prima facie evidence*

- (1) All maps, plans, documents or papers certified as provided in sub-section (2) to be copies of original maps, plans, documents or papers in custody as provided in sub-section (2)—
- (a) are admissible in evidence in any court or before any person acting judicially; and
 - (b) are prima facie evidence for the same purposes and to the same extent as their originals if they had been produced; and
 - (c) if certified as provided in sub-section (2) to have been made from an actual survey, are presumed prima facie to have been so made by a competent surveyor—

and all courts and persons acting judicially shall take judicial notice of certification as provided in sub-section (2).

- (2) Maps, plans, documents and papers are certified for the purposes of this section if they—
- (a) were certified before the commencement of the **Public Lands and Works Act 1964** under the seal of the Board of Land and Works to be copies of original maps, plans,

S. 72(2)(a)
amended by
No. 57/1989
s. 3(Sch. item
67.16).

-
- documents or papers in the custody of the Board of Land and Works; or
- (b) were certified on or after the commencement of the **Public Lands and Works Act 1964** and before 1 September 1983 under the hand of the Minister of Lands to be copies of original maps, plans, documents or papers in the custody of the Department of Crown Lands and Survey; or
 - (c) were certified on or after 1 September 1983 and before 2 November 1983 under the hand of the Minister for Conservation, Forests and Lands to be copies of original maps, plans, documents or papers in the custody of the Department of Crown Lands and Survey; or
 - (d) were certified on or after 2 November 1983 and before 21 March 1985 under the hand of the Minister for Conservation, Forests and Lands to be copies of original maps, plans, documents or papers in the custody of the Department of Conservation, Forests and Lands; or
 - (e) were certified on or after 21 March 1985 under the hand of the Minister for the time being administering the **Survey Co-ordination Act 1958** or by the Surveyor-General to be copies of original maps, plans, documents or papers in the custody of a Department administered by that Minister.

73. Proof of Crown grants

In any legal proceeding whatsoever in order to prove any grant of land from the Crown, it shall not be necessary to produce the original or the enrolment of such grant; but a certificate purporting to contain a transcript either of such enrolment or of a copy of such enrolment and of

Nos 3674
s. 66, 6012
s. 6(2).

the indorsements thereon respectively (if any) and signed by the registrar-general (for which certificate a fee of \$4 shall be demanded or taken) shall be sufficient evidence of such grant and of the enrolment thereof at the time (if any) stated in or upon such transcript.

No. 3674 s. 67.

74. *Proof of will and death*

The probate of a will or codicil or letters of administration with the will or codicil annexed (obtained or having operation within Victoria) shall in all cases whatsoever and whether relating to real or personal estate or both real and personal estate be evidence of the original will or codicil and of the contents thereof. And every probate or letters of administration shall in all cases be prima facie evidence of the death and the date of the death of the testator or intestate.

Nos 3674
s. 68, 6107
s. 4(3).

S. 75
amended by
Nos 9019
s. 2(1),
57/1989
s. 3(Sch. item
67.17(a)-(c)).

75. *Signature of clerks of courts to be evidence*

The words "clerk of the peace" or "clerk of petty sessions" or "clerk of the magistrates' court" or "registrar of the Magistrates' Court" accompanying any signature to any act or document which such clerk or registrar was at the time they purport to have been written by or under any Act authorized to do or sign shall be prima facie evidence that the person whose signature it purports to be was such clerk or registrar or a person having authority to do such act or sign such document and that the signature is such clerk's, such registrar's or such person's signature and was made at the time aforesaid.

Division 5A—Scientific Tests

Pt 3 Div. 5A
(Heading and
s. 75A)
inserted by
No. 8003
s. 2(1).
Cf. Crimes Act
1900—
(N.S.W.)
s. 414A.

75A. Evidence of results of scientific tests

S. 75A
inserted by
No. 8003
s. 2(1).

- (1) Where a person is charged before the Magistrates' Court with an indictable offence, it shall not be necessary, unless so directed by the court, for any person who has made a scientific examination of any article or body to give evidence of the result of the examination, but a certificate purporting to be under the hand of that person and setting out particulars of his scientific qualifications, that he has made the examination, and the facts and conclusions he has arrived at shall be prima facie evidence of the matters stated in the certificate.
- (2) The justice or court shall direct a person who has made a scientific examination of any article or body to give evidence of the result of the examination if any person who would have the right to cross-examine that person if that person gave evidence makes application to the justice or court in that behalf, but no person who has not less than seven days previously been served with a copy of a certificate complying with sub-section (1) and notice in writing informing him that it is proposed to give the certificate in evidence may make any such application, unless he has not less than three days previously had served upon the

S. 75A(1)
amended by
Nos 10257
s. 84(b)(i)(ii),
57/1989
s. 3(Sch. item
67.18(a)(b)).

S. 75A(2)
amended by
No. 10257
s. 84(c).

person proposing to give the certificate in evidence notice in writing that he requires the person who gave the certificate to give evidence.

S. 75A(3)
amended by
Nos 9902
s. 2(1),
127/1986
s. 102(Sch. 4
item 9).

- (3) Nothing in this section shall affect the operation of sections 55, 57 and 58 of the **Road Safety Act 1986**.

Division 6—Judicial Notice

No. 3674 s. 69.

76. *Acts of Parliament of the United Kingdom to be judicially noticed*

All courts and persons acting judicially within Victoria shall take judicial and official notice of all Acts of Parliament of the United Kingdom of Great Britain and Ireland or of the United Kingdom of Great Britain and Northern Ireland whether passed before or after the commencement of this Act and of the date of the coming into operation of any such Act.

No. 3674 s. 70.

77. *Australasian States and their Acts to be judicially noticed*

All courts and persons acting judicially within Victoria shall take judicial and official notice of every Australasian State and the extent of its territories at any time and of the House or Houses of Legislature at any time existing therein and also of all Acts of Parliament of any Australasian State whether passed before or after the commencement of this Act and of the date of the coming into operation of any such Act.

78. Public seals of States

No. 3674 s. 71.

All courts and persons acting judicially within Victoria shall take judicial and official notice of the impression of the public seal of any Australasian State without evidence of such seal having been impressed or any other evidence relating thereto.

79. Certain signatures and seals to be judicially noticed

Nos 3674
s. 72, 4654
s. 3, 5908
s. 16(1).

- (1) All courts and persons acting judicially within Victoria shall take judicial and official notice of—
- (a) the signature of any person who is for the time being or has at any time been the holder of any office to which this section applies; and
 - (b) the seal of such a person or of any body or court to which this section applies—

S. 79
amended by
Nos 6961 s. 2,
8565 s. 24(9),
9019 s. 2(1),
9713 s. 55(c),
substituted by
No. 10074 s. 9.

where that signature or seal purports to be attached or appended to any decree order certificate affidavit writ warrant summons or other judicial or official document, and shall also take judicial and official notice of the fact that that person holds or has held that office¹³.

- (2) The Secretary to the Department of Justice may by notice published in the Government Gazette declare any office, court or body (including any office, court or body in any Australasian State) to be an office, court or body to which this section applies.
- (3) The Secretary to the Department of Justice may by notice published in the Government Gazette amend or revoke any notice under sub-section (2) and any Order of the Governor in Council made under sub-section (2) as in force before the commencement of section 9 of the **Evidence (Amendment) Act 1985**.

S. 79(2)
amended by
Nos 10231
s. 9(a),
57/1989
s. 3(Sch. item
67.19),
46/1998
s. 7(Sch. 1).

S. 79(3)
substituted by
Nos 10231
s. 9(b),
57/1989
s. 3(Sch. item
67.19),
amended by
No. 46/1998
s. 7(Sch. 1).

S. 79(4)
inserted by
No. 10231
s. 9(b).

(4) An Order made under sub-section (2) by the Governor in Council before the commencement of section 9 of the **Evidence (Amendment) Act 1985** and which is in force immediately before that commencement continues in force until it is revoked under sub-section (3).

No. 3674 s. 73.

80. *All persons acting judicially to take judicial notice*

Where by or under any Act it is provided in effect that all courts or all courts of justice shall or may take judicial notice of any seal stamp or signature or any other matter or thing then all courts and persons acting judicially shall or may take judicial and official notice of such seal stamp signature or other matter or thing.

No. 3674 s. 74.

81. *Effect of judicial notice of seal or signature in certain cases*

Where under this or any other Part of this Act (including cases falling under the last preceding section) any court or person acting judicially has taken judicial or official notice of any seal or signature attached or appended on or to any document if according to the law in Victoria or elsewhere of which the court or person acting judicially has judicial or official notice or proof such seal or signature might properly have been attached or appended on or to such document, such court or person shall in the absence of any evidence matter or thing suggesting the contrary presume that such seal or signature was properly attached or appended at the time and place (if any) purporting to be the time and place at which it was so attached or appended and that there was jurisdiction or authority to sign or seal such document at such time and place and that such document is what on its construction it purports to be and is a valid and subsisting document.

Division 7—By-laws and Minutes

82. Definitions

No. 3674 s. 75.

In this Division—

"by-laws" include articles of association, local laws, regulations and rules; and

S. 82 def. of "by-laws" amended by No. 78/1991 s. 26.

"corporation" includes the Melbourne and Metropolitan Board of Works and every corporation howsoever created and whether the same exists for municipal trading mining charitable or other purposes.

S. 82 def. of "corporation" amended by No. 57/1989 s. 3(Sch. item 67.20).

83. Proof of by-laws

No. 3674 s. 76.

The production of a document purporting to be a written or printed copy of any by-laws made by or on behalf of any corporation under any general or local Act of Parliament or any Act of a local or personal nature authenticated as hereinafter mentioned shall be prima facie evidence of the due making and existence of such by-laws and of the time at which the same by-laws came into force without further proof of the making of such by-laws or of the performance of any condition the doing of any act or the lapse of any time respectively necessary to give them validity.

84. Form of certificate

No. 3674 s. 77.

For the purpose of such authentication a certificate in the form contained in the Third Schedule to this Act or to the like effect written or printed on any such copy as aforesaid shall be sealed with the common seal of the corporation, which in the case of the Melbourne and Metropolitan Board of Works shall be affixed in the manner by law required, and in the case of any municipal council shall be affixed in the presence

S. 84 amended by Nos 12/1989 s. 4(1)(Sch. 2 item 41.2), 57/1989 s. 3(Sch. item 67.20), 125/1993 s. 20(4)(a).

of and attested by the Mayor and the Chief Executive Officer of the Council, and in the case of any other corporation shall be affixed in the presence of and attested by any two of the board of directors or managing or governing body by whatsoever designation or title they may be called or known.

No. 3674 s. 78.

85. *Technical proof unnecessary*

It shall not be necessary to give any proof of the common seal when purporting to be attached to any such certificate nor shall it be necessary to prove by the attesting witnesses or otherwise that such seal was affixed in their presence, or that the persons signing filled the offices or characters set opposite to their names respectively, but on proof by admission or otherwise of the handwriting of such attesting witnesses it shall be presumed until the contrary is proved that such seal was affixed as it purports to have been and that they filled the offices or characters represented.

No. 3674 s. 79.

S. 86

amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 41.3),
57/1989
s. 3(Sch.
items 67.20,
67.21).

86. *Proof of proceedings of councils, committees etc.*

Any minute of proceedings at meetings of the Board of Land and Works or of any municipal council or of any board of directors or of any managing or governing body by whatsoever designation or title they are called or known or of committees of any municipal council if signed by any person purporting to be the Chairperson of the Melbourne and Metropolitan Board of Works or the Mayor of a municipal council or the chairperson of a meeting of a municipal council or of a board of directors or of a managing or governing body or of a committee of a municipal council and purporting to be so signed either at the meeting at which such proceedings took place or at the next ensuing meeting of the body whose proceedings are recorded, shall be admissible in

evidence in all legal proceedings without further proof, and until the contrary is proved every meeting in respect of the proceedings of which the minutes have been so made shall be deemed to have been duly convened and held and all the members thereof to have been duly qualified and when such proceedings are proceedings of committees until the contrary is proved such committees shall be deemed to have been duly and regularly constituted and to have had power to deal with the matters referred to in such proceedings.

Division 8—Convictions and Acquittals

87. *Proof of trial or conviction or acquittal for an indictable offence by certified copy*

- (1) In any legal proceeding whatsoever in order to prove the trial or conviction or acquittal in Victoria of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof; but a certificate purporting to contain the substance and effect only (omitting the formal part) of the presentment indictment or charge or of the conviction or of the acquittal (as the case may be) of or for such offence purporting to be signed by the officer having the custody of the records of the court where such first-mentioned person was tried convicted or acquitted or by the deputy of such officer or by the officer for the time being acting in such first-mentioned capacity (for which certificate a fee of Fifty cents (\$0.50) and no more shall be demanded or taken) shall be sufficient evidence of the said trial or conviction or acquittal without proof of the signature or official character of the person appearing to have signed the same or

No. 3674 s. 80.
S. 87
amended by
No. 57/1989
s. 3(Sch. item
67.22).

of the fact that he has the custody of such records; and the conviction shall be deemed to be unappealed against and otherwise unaffected unless the contrary is proved.

S. 87(2)
amended by
No. 43/1994
s. 56(Sch.
item 2).

- (2) No fee shall be demanded or taken for any such certificate if the same is applied for by any Crown prosecutor or person acting on her behalf or by any person acting under the direction of a law officer or by any person acting for the prisoner.

No. 3674 s. 81.
S. 88
amended by
No. 10084
s. 25(a)–(c).

88. *Mode of proving previous convictions in other countries*

In any legal proceeding whatsoever in order to prove a conviction out of Victoria (whether in or out of Australia) of any person a certificate purporting to contain the substance and effect only (omitting the formal part) of the conviction purporting to be signed by the officer having the custody of the records of the court where the offender was convicted or by the deputy of such officer or by the officer for the time being acting in such first-mentioned capacity shall be sufficient evidence of such conviction without proof of the signature or official character of the persons signing such certificate and without any further proof as to the custody of such records; and the conviction shall be deemed to be unappealed against and otherwise unaffected unless the contrary is proved.

No. 3674 s. 82.
S. 89
amended by
Nos 9019
s. 2(1),
57/1989
s. 3(Sch. item
67.23(a)(c)).

89. *Evidence of previous summary conviction*

In any legal proceeding whatsoever in order to prove a previous summary conviction before the Magistrates' Court¹⁴—

- (a) a document purporting to be a copy of any such conviction purporting to be certified by the proper officer of the court to which such conviction has been returned;

(b) a document proved to be a true copy of such conviction;

(c) the register kept under the **Magistrates' Court Act 1989** or any corresponding previous enactment or a certificate purporting to contain an extract from such register of such conviction purporting to be signed by a registrar or deputy registrar—

S. 89(c) amended by Nos 9059 s. 2(1), 57/1989 s. 3(Sch. item 67.23(b)(i)(ii)).

shall notwithstanding anything in any Act of Parliament contained be sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed any such document or certificate or of the statement that the register is so kept; and the conviction shall be deemed to be unappealed against and otherwise unaffected unless the contrary is proved.

* * * * *

Pt 3 Div. 9 (Heading and ss 90–98)¹⁵ repealed.

* * * * *

Pt 3 Div. 10 (Heading and ss 98A–98C) inserted by No. 7366 s. 4, repealed by No. 8228 s. 5(2).

Pt 3A
(Heading and
ss 90, 91)
inserted by
No. 74/1993
s. 3.

**PART IIIA—ADMISSIBILITY OF FINDINGS OF GUILT IN
CIVIL PROCEEDINGS**

S. 90
inserted by
No. 74/1993
s. 3.

90. *Convictions etc. as evidence in civil proceedings*¹⁶

- (1) In a civil proceeding the fact that a person has been found guilty of an offence by a court in Victoria or elsewhere is admissible in evidence for the purpose of proving, where to do so is relevant to an issue in that proceeding, that the person committed the offence, whether or not the person is a party to the civil proceeding and whether or not the person pleaded guilty to the offence.
- (2) Nothing in this section prejudices the operation of section 91 or any other enactment whereby a conviction or a finding of fact in any criminal proceeding is for the purposes of any other proceeding made conclusive evidence of any fact.

S. 91
inserted by
No. 74/1993
s. 3.

91. *Conclusiveness of convictions etc. for purposes of defamation proceedings*¹⁷

In a proceeding for libel or slander in which the question whether the plaintiff in the proceeding did or did not commit a criminal offence is relevant to an issue arising in the proceeding, proof that, at the time when that issue falls to be determined, that person stands convicted or found guilty of that offence by a court in Victoria or another State or a Territory of the Commonwealth is conclusive evidence that the person committed that offence and the conviction or finding of guilt is admissible in evidence accordingly.

**PART IV—OATHS AFFIRMATIONS AFFIDAVITS
DECLARATIONS**

Division 1—Introductory

99. Definition

No. 3674 s. 92.

In Division five and the subsequent Divisions of this Part "**affidavit**" includes affirmation and declaration.

Division 2—Oaths and Affirmations

100. Manner of administration of oaths

No. 3674 s. 93.

- (1) Any oath may be administered and taken in the form and manner following: The person taking the oath shall hold the Bible or the New Testament or the Old Testament in his uplifted hand and shall repeat after the officer administering the oath or otherwise say the words "I swear by Almighty God that . . ." followed (with any necessary modifications) by the words of the oath prescribed or allowed by law without any further words of adjuration imprecation or calling to witness.
- (2) Any oath may be administered to and taken by two or more persons at the same time in the form and manner aforesaid or in the form and manner following:

S. 100(2)
amended by
No. 7651 s. 2.

Each of the persons taking the oath shall hold the Bible or the New Testament or the Old Testament in his uplifted hand and the officer administering the oath shall say—"You and each of you swear by Almighty God that" followed (with any necessary modifications) by the words of the oath prescribed or allowed by law without any further words of adjuration imprecation or calling to witness, and forthwith after the officer has said

the words referred to, each of the persons taking the oath shall say—"I swear by Almighty God to do so."

- (3) Any oath taken as aforesaid shall for all purposes be deemed to be as valid and effectual as if administered and taken in the manner prescribed or allowed by statute or otherwise.
- (4) Any oath may be administered in any manner which is now lawful.
- (5) The officer shall without question—
 - (a) unless the person or any of the persons about to be sworn voluntarily objects so to take the oath or is physically incapable of so taking the oath; or
 - (b) unless the officer or in the case of judicial proceedings unless the court or person acting judicially, has reason to think or does think that the form of the oath prescribed by sub-section (1) or sub-section (2) would not be binding on the conscience of the person about to be sworn—

administer the oath in the form and manner set out in the said sub-section (1) or sub-section (2) as the case may be:

Provided that no oath shall be deemed illegal or invalid by reason of any breach of the provisions of this sub-section.

- (6) In this section and in section 103 "**officer**" includes any and every person duly authorized to administer oaths and any and every person administering oaths under the direction of any court or person acting judicially.

S. 100(5)(b)
amended by
No. 57/1989
s. 3(Sch. item
67.24(a)).

S. 100(6)
amended by
Nos 10074
s. 10(3),
57/1989
s. 3(Sch. item
67.24(b)).

- (7) This section shall apply notwithstanding that in any Act whether passed before or after the commencement of this Act a form of oath is prescribed which has introductory words other than the words "I swear by Almighty God," or which includes words such as the words "So help me God" or other words of adjuration imprecation or calling to witness. And whenever in any Act there is, in effect, a provision for subscribing the form of oath prescribed by such Act such provision shall be deemed to be complied with if the form of oath allowed by this section is subscribed in lieu of such prescribed form.

101. *Swearing with uplifted hand*

No. 3674 s. 94.

If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.

102. *When affirmation may be made instead of oath*

No. 3674 s. 95.

Where—

S. 102
substituted by
No. 10074
s. 10(1).

- (a) a person objects to being sworn; or
- (b) it is not in the circumstances reasonably practicable without inconvenience or delay to administer an oath to a person in the manner appropriate to the religious belief of the person—

the person shall be permitted to make a solemn affirmation instead of taking an oath in all places and for all purposes where an oath is required by law, and that affirmation shall be of the same force and effect as if the person had taken the oath.

s. 103

No. 3674 s. 96.

103. Form of oral affirmation

- (1) Every oral affirmation shall commence: "I, A.B., do solemnly, sincerely, and truly declare and affirm," and then proceed with the words of the oath prescribed or allowed by law, omitting any words of adjuration imprecation or calling to witness.
- (2) Every affirmation in writing shall commence: "I, _____ of _____, do solemnly and sincerely affirm," and the form in lieu of jurat shall be "Affirmed at _____, this _____ day of _____, 19____, before me."
- (3) An oral affirmation may be administered to and made by two or more persons at the same time in the following form and manner:

S. 103(3) inserted by No. 10074 s. 10(2).

The Officer administering the affirmation shall say—

"You and each of you do solemnly, sincerely, and truly declare and affirm . . ." followed (with any necessary modifications) by the words of the oath prescribed or allowed by law, omitting any words of adjuration imprecation or calling to witness, and forthwith after the officer has said the words referred to, each of the persons making the affirmation shall say—"I do so declare and affirm."

No. 3674 s. 97.

104. Validity of oath not affected by absence of religious belief

When an oath has been duly administered and taken, the fact that the person to whom the same was administered had at the time of taking such oath no religious belief shall not for any purpose affect the validity of such oath.

Division 3—Declarations in Public Departments

105. *Declarations may be substituted for oaths and affidavits*

In any case where by any statute law or ordinance made or to be made relating to any of the public revenues of Victoria or any of the public offices or public departments or by any official regulation in any department any oath or affidavit might but for this Act be required to be taken or made by any person on the doing of any act matter or thing or for the purpose of verifying any book entry or return or for any other purpose whatsoever, it shall be lawful for the Governor in Council to substitute a statutory declaration to the same effect as the oath or affidavit which but for this Act might be required to be taken or made. But no substitution as aforesaid shall be made for the oath of allegiance in any case, or for any oath or affidavit which now is or hereafter may be made or taken or be required to be made or taken in any judicial proceeding in any court of justice, or in any proceeding for or by way of summary conviction.

No. 3674 s. 98.
S. 105
amended by
Nos 51/1989
s. 144(2)(b),
57/1989
s. 3(Sch. item
67.25).

106. *Such substitution to be notified in Gazette*

When the Governor in Council in any such case as aforesaid has substituted a declaration in lieu of an oath or affidavit, the same shall be notified in the Government Gazette; and from and after the expiration of twenty-one days next following the day of the date of the Government Gazette wherein such notification has been first published the provisions of this Act shall extend and apply to each and every case office or department specified in such notification. And the person who might under the Act imposing the same have been required to take or make such oath or affidavit

No. 3674 s. 99.
S. 106
amended by
No. 51/1989
s. 144(2)
(c)(i)(ii).

shall in the presence of a person who is authorised under section 107A(1) to witness the signing of a statutory declaration make and subscribe such declaration. And it shall not be lawful for any officer or other person to administer or cause to be administered or receive or cause to be received any oath or affidavit in lieu of which such declaration as aforesaid has been directed to be substituted.

Pt 4 Div. 4
(Heading)
amended by
No. 51/1989
s. 144(2)(d).

No. 3674
s. 100.

S. 107
substituted by
No. 51/1989
s. 144(2)(e).

Division 4—Statutory Declarations

107. *Statutory declarations*

- (1) A statutory declaration must—
 - (a) contain an acknowledgement that it is true and correct and is made in the belief that a person making a false declaration is liable to the penalties of perjury; and
 - (b) be signed by the person making it in the presence of a person who is authorised under section 107A(1) to witness the signing of a statutory declaration.
- (2) A person who makes a declaration which the person knows to be false is liable to the penalties of perjury.

S. 107A
inserted by
No. 51/1989
s. 144(2)(e) (as
amended by
No. 34/1990
s. 4(Sch. 3
item 16)).

107A. *List of persons who may witness statutory declarations*

- (1) Any of the following persons may witness the signing of a statutory declaration—
 - (a) a justice of the peace or a bail justice;
 - (b) a notary public;
 - (c) a barrister and solicitor of the Supreme Court;

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- (d) a clerk to a barrister and solicitor of the Supreme Court;
 - (e) the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court;
 - (f) the registrar of probates or an assistant registrar of probates;
 - (g) the associate to a judge of the Supreme Court or of the County Court;
 - (h) the secretary of a master of the Supreme Court or of the County Court;
 - (i) a person registered as a patent attorney under Part XV of the Patents Act 1952 of the Commonwealth;
 - (j) a member of the police force;
 - (k) the sheriff or a deputy sheriff;
 - (l) a member or former member of either House of the Parliament of Victoria;
 - (m) a member or former member of either House of the Parliament of the Commonwealth;
 - (n) a councillor of a municipality;
 - (o) a senior officer of a Council as defined in the **Local Government Act 1989**;
 - (p) a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;
 - (q) a dentist;

S. 107A(1)(o) substituted by No. 125/1993 s. 20(4)(b).

S. 107A(1)(p) amended by No. 23/1994 s. 118(Sch. 1 item 20.2).

Evidence Act 1958

Act No. 6246/1958

s. 107A

S. 107A(1)(r)
amended by
No. 58/1997
s. 96(Sch.
item 4).

(r) a veterinary practitioner;

(s) a pharmacist;

(t) a principal in the teaching service;

(u) the manager of a bank;

(v) a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or the National Institute of Accountants;

(w) the secretary of a building society;

(x) a minister of religion authorised to celebrate marriages;

S. 107A(1)(y)
amended by
No. 84/1994
s. 62,
substituted by
No. 46/1998
s. 7(Sch. 1).

(y) a person employed under Part 3 of the **Public Sector Management and Employment Act 1998** with a classification that is prescribed as a classification to which this section applies or who holds office in a statutory authority with such a classification;

(z) a fellow of the Institute of Legal Executives (Victoria).

(2) Despite anything to the contrary in any Act, a person referred to in paragraph (c) or (d) of subsection (1) is not prevented from witnessing the signing of a statutory declaration only because he or she is—

S. 107A(2)(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.4(a)).

(a) acting for any of the parties to the proceeding or matter in respect of which the declaration is made; or

S. 107A(2)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.4(b)).

(b) a clerk to a person so acting.

(3) If the signing of a statutory declaration purports to have been witnessed by a person referred to in sub-section (1), all persons to whom that declaration comes must take official notice of that declaration and of the qualifications of the person referred to in that sub-section to witness that signing.

108. *Objection that matter is not one requiring verification not to be taken*

In any proceeding or prosecution which may hereafter be instituted against any person or persons for making any false declaration, no objection shall be taken or allowed by reason only that such declaration did not relate to any fact matter or thing required or authorized by any law at the time in force to be verified or otherwise assured or ascertained by or upon the oath affirmation declaration or affidavit of some or any person.

No. 3674
s. 101.
S. 108
amended by
No. 51/1989
s. 144(2)(f).

109. *Name and address of person witnessing declaration to appear on declaration*

After witnessing the signing of a declaration, the person by whom it is witnessed must legibly write, type or stamp his or her name and address below his or her own signature.

Penalty: 1 penalty unit.

No. 3674
s. 102.
S. 109
substituted by
No. 51/1989
s. 144(2)(g).

Division 5—Courts and Officers

110. *Courts etc. may administer oaths to witnesses*

No. 3674
s. 103.

All courts and persons having by law or by consent of parties authority to hear receive and examine evidence are hereby empowered to administer oaths to all such witnesses as are legally called before them respectively.

S. 110A
inserted by
No. 9407 s. 3,
repealed by
No. 51/1989
s. 144(2)(h).

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No. 3674
s. 104.
S. 111
amended by
No. 51/1989
s. 144(2)(i).

111. *Power of certain officers of courts etc. to administer oaths*

Every person who being an officer of or performing duties in relation to any court is for the time being so authorized by a judge of the court or by or in pursuance of any rules or orders regulating the procedure of the court and every person directed to take an examination in any cause matter or proceeding in any court shall have authority to administer an oath or take an affidavit for any purpose connected with his duties.

S. 111A
inserted by
No. 7460 s. 2.

111A. *Person appointed by foreign authority may take evidence and administer oaths*

- (1) Where an authority desires to take or receive evidence in Victoria that authority may appoint a person to take or receive evidence in Victoria who shall subject to sub-section (2) have power to take or receive evidence in Victoria for that authority and for that purpose to administer an oath.
- (2) Where the authority is not a court or judge a person so appointed shall not have power to take or receive evidence or administer an oath in Victoria unless he has first obtained the consent of the Attorney-General.

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S. 111A(3)
repealed by
No. 9156
s. 2(a).

(4) In this section "**authority**" means any court judge person or body which is authorized under the law of a place outside Victoria to take or receive evidence on oath in that place.

S. 111A(4)
amended by
No. 9156
s. 2(b)(i)(ii).

Division 6—Gaolers

112. Affidavits of prisoners

No. 3674
s. 105.

Any affidavit of any prisoner in any prison or gaol in Victoria whether such affidavit is in a proceeding in the Supreme Court or not may be sworn before the keeper of such prison or gaol and every such keeper is hereby required and authorized to administer the oath upon and take such affidavit without fee or reward, and all courts and persons acting judicially shall take judicial and official notice of the seal or signature of any such gaoler attached to any such affidavit.

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Pt 4 Div. 7
(Heading and
ss 113–117)
amended by
No. 7460 s. 3,
substituted as
Pt 4 Div. 7
(Heading and
ss 113–123A)
by No. 10074
s. 11(1),
repealed by
No. 51/1989
s. 144(2)(j).

Evidence Act 1958
Act No. 6246/1958

s. 123C

Pt 4 Div. 8
(Heading and
ss 118–122)
amended by
Nos 6540
s. 2(a)–(c),
6716 s. 2,
7366 s. 5,
7460 s. 4,
7876 s. 2(3),
8139 ss 3–5
(inserting new
ss 122A–
122J), 9042
s. 2(a)–(g),
9427 s. 6(1),
9554 s. 2(2),
substituted as
Pt 4 Div. 8
(Heading and
s. 123B) by
No. 10074
s. 11(1),
amended by
Nos 12/1989
s. 4(1)(Sch. 2
items 41.4,
41.5), 19/1989
s. 16(Sch.
item 21.2),
repealed by
No. 56/1989
s. 14(2)(i).

Pt 4 Div. 9
(Heading and
s. 123)
amended by
Nos 6855 s. 2,
7039
s. 2(1)(a)(b),
substituted as
Pt 4 Div. 9
(Heading and
s. 123C) by
No. 10074
s. 11(1).

S. 123C
inserted by
No. 10074
s. 11(1).

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Division 9—Affidavits in Victoria¹⁸

123C. *Affidavits in Victoria how sworn and taken*

- (1) Affidavits for use in any court or for any purpose or in any way whatsoever authorized by law whether by or under any Act of Parliament or by custom or otherwise may be sworn and taken within Victoria before—

Evidence Act 1958
Act No. 6246/1958

s. 123C

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|--|---|
| (a) any judge or the associate to any judge; | S. 123C(1)(a) amended by No. 51/1989 s. 144(2) (k)(i)(A). |
| (b) a master of the Supreme Court or of the County Court or the secretary of such a master; | S. 123C(1)(b) amended by Nos 19/1989 s. 16(Sch. item 21.3), 51/1989 s. 144(2) (k)(i)(B) (as amended by No. 34/1990 s. 4)(Sch. 3 item 17), S. 123C(1)(c) substituted by No. 51/1989 s. 144(2) (k)(i)(C). |
| (c) a justice of the peace or a bail justice; | S. 123C(1)(d) substituted by No. 51/1989 s. 144(2) (k)(i)(D). |
| (d) the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court; | S. 123C(1)(da) inserted by No. 51/1989 s. 144(2) (k)(i)(D). |
| (da) the registrar of probates or an assistant registrar of probates; | S. 123C(1)(db) inserted by No. 35/1996 s. 453(Sch. 1 item 29.5(a)). |
| (db) the registrar or deputy registrar of the Legal Profession Tribunal; | S. 123C(1)(e) substituted by No. 51/1989 s. 144(2) (k)(i)(E). |
| (e) a member or former member of either House of the Parliament of Victoria; | S. 123C(1)(ea) inserted by No. 51/1989 s. 144(2) (k)(i)(E). |
| (ea) a member or former member of either House of the Parliament of the Commonwealth; | |
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- (f) a notary public;
- S. 123C(1)(g) substituted by No. 35/1996 s. 453(Sch. 1 item 29.5(b)), amended by No. 102/1997 s. 49(Sch. item 2.2).
- (g) a natural person who is a current practitioner or interstate practitioner within the meaning of the **Legal Practice Act 1996**;
- S. 123C(1)(ga) inserted by No. 51/1989 s. 144(2) (k)(i)(F).
- (ga) a member of the police force of or above the rank of sergeant or for the time being in charge of a police station;
- S. 123C(1)(gb) inserted by No. 51/1989 s. 144(2) (k)(i)(F), substituted by No. 46/1998 s. 7(Sch. 1).
- (gb) a person employed under Part 3 of the **Public Sector Management and Employment Act 1998** with a classification that is prescribed as a classification to which this section applies;
- S. 123C(1)(gc) inserted by No. 51/1989 s. 144(2) (k)(i)(F), substituted by No. 125/1993 s. 20(4)(c).
- (gc) a senior officer of a Council as defined in the **Local Government Act 1989**;
- S. 123C(1)(gd) inserted by No. 51/1989 s. 144(2) (k)(i)(F).
- (gd) a person registered as a patent attorney under Part XV of the Patents Act 1952 of the Commonwealth;
- S. 123C(1)(ge) inserted by No. 51/1989 s. 144(2) (k)(i)(F) (as amended by No. 34/1990 s. 4(Sch. 3 item 18)).
- (ge) a fellow of the Institute of Legal Executives (Victoria);
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- (h) any officer or person empowered authorized or permitted by or under any Act of Parliament to take affidavits in relation to the matter in question or in the particular part of Victoria in which the affidavit is sworn and taken.
- (2) All courts and persons acting judicially shall take judicial and official notice of the seal or signature of any of the persons referred to in sub-section (1) attached or appended to any affidavit within the meaning of that sub-section.
- (3) The person before whom an affidavit is sworn or taken must legibly write, type or stamp his or her name and address below his or her own signature where it appears on the affidavit.
- Penalty applying to this sub-section: 1 penalty unit.
- (4) Notwithstanding anything to the contrary in any Act, a legal practitioner shall not be debarred from taking and receiving any affidavit referred to in sub-section (1) by reason only that the legal practitioner is acting for any of the parties to the proceedings matter or instrument in respect of which the affidavit is sworn and taken.
- (5) No fees shall be demanded or taken for taking and receiving any affidavit under this section by any person who is empowered to take and receive such an affidavit by virtue only of this section.

S. 123C(3)
substituted by
No. 51/1989
s. 144(2)(k)(ii).

S. 123C(4)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.5
(c)(i)(ii)).

S. 123C(5)
amended by
No. 51/1989
s. 144(2)(k)(iii).

Penalty: 1 penalty unit.

Division 10—Affidavits in Places out of Victoria

124. *Taking oaths out of Victoria*

- (1) Affidavits for use in any court or for any purpose or in any way whatsoever authorized by law whether by or under Act of Parliament or by

No. 3674
s. 116.

Nos 5183 s. 8,
5703 s. 2,
5896 s. 2,
6112 s. 2.

Evidence Act 1958
Act No. 6246/1958

custom or otherwise may be sworn and taken in
any place out of Victoria—

S. 124(1)(a)
substituted by
No. 10074
s. 11(2)(a),
repealed by
No. 51/1989
s. 144(2)(l)(i).

* * * * *

(b) before—

- (i) an Australian consular officer; or
- (ii) an ambassador envoy Minister chargé d'affaires secretary of embassy or legation consul-general consul vice-consul acting consul pro-consul or consular agent of any part of Her Majesty's dominions—

exercising his function in such place;

(c) before any person having authority to administer an oath in that place.

In this sub-section "**Australian consular officer**" means a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside Australia—

Ambassador;

High Commissioner;

Minister;

Head of Mission;

Commissioner;

Chargé d'affaires;

Counsellor or Secretary at an Embassy, High Commissioner's Office, Legation or other post;

Consul-general;

Consul;
Vice-consul;
Trade Commissioner; and
Consular Agent.

- (2) In the case of a person purporting to have such authority otherwise than by the law of a foreign country not under the dominion of Her Majesty all courts and persons acting judicially shall take judicial and official notice of the seal or signature of any such person attached or appended to any such affidavit and for the purpose of this section judicial and official notice may also be taken as to what places are and what places are not under the dominion of Her Majesty.
- (3) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of Her Majesty such authority may be verified by any of the persons mentioned in sub-section (1)(b) of this section or by the certificate of a court of such place and if such authority purports so to be verified such affidavit shall be admissible for all purposes without further proof of the seal or signature or of the judicial official or other character of such first mentioned person.
- (4) The provisions mentioned in the preceding sub-sections of this section shall apply notwithstanding that any person or persons is or are named specified or indicated as the person or persons before whom such affidavit shall or may be sworn or taken.
- (5) Where by or under any Act any person or persons is or are named specified or indicated as the person or persons before whom such affidavit shall or may be sworn or taken all courts and

S. 124(3)
amended by
No. 51/1989
s. 144(2)(i)(ii).

s. 125

Evidence Act 1958
Act No. 6246/1958

persons acting judicially shall take judicial and official notice of the seal or signature of any such person attached or appended to any such affidavit.

S. 124(6)
inserted by
No. 10074
s. 11(2)(b),
repealed by
No. 51/1989
s. 144(2)(l)(iii).

* * * * *

No. 3674
s. 117.

125. *Affidavits and declarations required to be made before a justice sufficient if made before a justice elsewhere*

- (1) Where by any Act or by an order in council rule regulation or by-law made pursuant to any Act any affidavit or declaration is required or authorized or permitted to be administered or taken before a justice of the peace it shall be sufficient for all purposes if such affidavit or declaration is taken before a justice of the peace for that part of Her Majesty's dominions in which such affidavit or declaration is taken.
- (2) All courts and persons acting judicially shall take judicial and official notice of the signature of any justice of the peace in any part of Her Majesty's dominions when such signature is attached or appended to any such affidavit or declaration and the place where such signature was so attached or appended purports to be shown and for the purposes of this section judicial and official notice may be taken as to what places are under the dominion of Her Majesty.

Division 11—Jurat

126. *Jurat to state where and when oath is taken*¹⁹

Every person authorized by or under this Act to take affidavits before whom any affidavit is sworn or taken shall state truly in the jurat or attestation at what place and on what date the affidavit was sworn.

No. 3674
s. 118.
S. 126
amended by
No. 51/1989
s. 144(2)(m).

126A. *Jurat etc. to affidavit to be prima facie evidence of execution*

The signature of a person authorized by or under this Act to take affidavits when appearing in any jurat or attestation to an affidavit shall be prima facie evidence that the affidavit was duly sworn or taken (as the case requires) before the person purporting to have attested the affidavit and on the day and in the place attested to.

S. 126A
inserted by
No. 7660 s. 2,
amended by
No. 51/1989
s. 144(2)(n).

**PART V—ATTESTATIONS VERIFICATIONS
ACKNOWLEDGMENTS NOTARIAL ACTS ETC.**

No. 3674
s. 119.

127. *Provision of Part 4 extended to attestations, notarial acts etc.*

S. 127(1)
amended by
No. 51/1989
s. 144(2)(o)(i).

(1) The provisions of Divisions six nine and ten of Part IV shall as far as applicable extend to the taking of all recognisances of bail attestations verifications acknowledgments and signatures in relation to any documents required authorized or permitted by or under any Act or by custom or otherwise to be attested verified acknowledged or signed and to the doing of all notarial acts as if such provisions had been re-enacted in this Part excluding words relating to the administration of oaths and the taking of affidavits and substituting therefor words relating to the taking and doing of such first mentioned matters and things.

S. 127(2)
amended by
No. 51/1989
s. 144(2)(o)(ii).

(2) The provisions of sub-section (1) shall not apply to any matter or thing specially required to be attested verified acknowledged or signed before a court or a judge but except where a contrary intention can be gathered shall apply in all cases whatsoever and notwithstanding that it is enacted that any such matter or thing shall or may be taken or done before some named specified or indicated officer or other person.

(3) In this section the expression "**notarial acts**" includes all acts matters and things which in Victoria or elsewhere a notary public can attest or verify or otherwise do by under any Act of Parliament custom or otherwise for the purpose of being used in Victoria.

128. Attestations etc. before a justice²⁰

No. 3674
s. 120.

- (1) Where by any Act or by any order in council regulation rule or by-law made pursuant to any Act any document is required authorized or permitted to be attested verified by or signed or acknowledged before a justice of the peace it shall be sufficient for all purposes if such document is attested or verified or signed or acknowledged in any part of Her Majesty's dominions by or before a justice of the peace for that part.
- (2) All courts and persons acting judicially shall take judicial and official notice of the signature of any justice of the peace in any part of Her Majesty's dominions when such signature is attached or appended to any such document and the place where such signature was so attached or appended purports to be shown.

S. 128(1)
amended by
Nos 10074
s. 11(3)(b),
51/1989
s. 144(2)(p).

* * * * *

S. 129
repealed by
No. 10074
s. 11(3)(c).

PART VI—RECORDING OF EVIDENCE

No. 5877 s. 2
[122].

130. *Power to person acting judicially to direct that evidence be recorded*

S. 130(1)
amended by
Nos 9156
s. 3(2)(a)(i),
110/1986
s. 140(2),
100/1995
s. 22(1)(a)–(d).

(1) Any person acting judicially if in his or her discretion he or she thinks fit may on the application of any party to any legal proceeding before him or her, and such person shall upon the application of all the parties to any legal proceeding before him or her, direct that any evidence to be given in the legal proceeding be recorded and transcribed in any manner that he or she directs.

S. 130(2)
amended by
No. 8752
s. 6(1)(a),
substituted by
No. 100/1995
s. 22(2).

(2) A direction under sub-section (1) may include such terms and conditions as the person acting judicially thinks fit.

S. 130(3)
amended by
No. 9156
s. 3(2)(a)(ii).

(3) Where any direction is given under this section the person who is to record the evidence shall be selected by all the parties to the legal proceeding or in default of their agreement by the person acting judicially in the proceeding.

S. 130(4)
amended by
Nos 9156
s. 3(2)(a)(iii),
100/1995
s. 22(3).

(4) Where any evidence is recorded pursuant to this section the person acting judicially having jurisdiction to determine by whom the costs of the legal proceeding are to be paid may decide in his or her discretion by whom the costs of recording and transcribing such evidence shall be paid.

No. 5877 s. 2
[123].

131. *As to methods of recording evidence*

S. 131
amended by
No. 9156
s. 3(2)(b).

Any evidence recorded under this Part shall be recorded by—

(a) a shorthand writer;

S. 131(a)
amended by
Nos 8752
s. 6(1)(b), 9156
s. 3(2)(b),
substituted by
No. 100/1995
s. 23(1).

(b) mechanical means, that is to say by tape
recording machine or any mechanical or
electronic or other device.

S. 131(b)
amended by
Nos 8003
s. 3(a), 10087
s. 3(1),
substituted by
No. 100/1995
s. 23(1).

* * * * *

Ss 132–133
repealed.²¹

**134. *Persons recording evidence under this Part to be
officers of the court***

No. 5877 s. 2
[126].

S. 134
amended by
Nos 8752
s. 6(1)(e), 9156
s. 3(2)(d),
100/1995
s. 23(3)(a)–(c).

Every person recording any evidence pursuant to
this Part shall for the time being be an officer of
any court in or for which he or she is required to
record the evidence and shall be under the
direction of the court with regard to the
performing of his or her duty in recording and
transcribing or causing to be transcribed such
evidence.

**135. *Records made under this Part to be received as prima
facie evidence of matter therein contained***

No. 5877 s. 2
[127].

S. 135
amended by
No. 8228
s. 6(a).

(1) The notes of any shorthand writer or the record
made by mechanical means under this Part and the
written transcript of such notes or record when
certified as correct by the shorthand writer or the
person recording the evidence or the person
preparing the written transcript are evidence of

S. 135(1)
amended by
Nos 8752
s. 6(1)(f)(i)(ii),
9156 s. 3(2)(e),
substituted by
No. 100/1995
s. 23(4).

s. 137

anything recorded in the notes, record or transcript.

S. 135(2)
inserted by
No. 8228
s. 6(b),
amended by
Nos 8752
s. 6(1)(f)(iii),
100/1995
s. 23(5).

- (2) Where it is made to appear to a court that a document contains a written transcript of the notes of a shorthand writer or of a record made under this Part by a writer or person who is dead or who is out of Victoria or who is unfit by reason of his bodily or mental condition to certify to the correctness of the transcript of the notes or record and the court is satisfied that the transcript of the notes or record is correct the court may receive the transcript as prima facie evidence of anything therein recorded.

S. 136
amended by
No. 9156
s. 3(2)(f),
repealed by
No. 100/1995
s. 23(6).

* * * * *

No. 5877 s. 2
[129].

137. *Penalty for falsely recording evidence*

S. 137
amended by
Nos 9156
s. 3(2)(g), 9576
s. 11(1).

Any person who wilfully—

- (a) records or transcribes in a false or incorrect manner any evidence required under this Part to be recorded;
- (b) tampers with or alters or falsifies or permits anyone to tamper with alter or falsify any record of such evidence or any transcript thereof;
- (c) certifies as correct any record or transcript of such evidence which is false or incorrect—

shall be guilty of an indictable offence and on conviction thereof shall be liable to imprisonment for a term of not more than five years.

Ss 138, 139
repealed.²²

* * * * *

140. Power to Governor in Council to regulate fees

No. 5877 s. 2
[132].

(1) The Governor in Council may from time to time
make regulations for or with respect to—

S. 140(1)
substituted by
No. 6855 s. 3.

* * * * *

S. 140(1)(a)
repealed by
No. 100/1995
s. 23(7)(a).

(b) prescribing fees payable to the Crown by any
party to any legal proceeding and by any
other person in respect of the supplying of a
document or any medium containing a
transcript of evidence recorded and for any
other associated transcript services;

S. 140(1)(b)
amended by
Nos 9156
s. 3(3),
100/1995
s. 23(7)(b).

* * * * *

S. 140(1)(c)–
140(1)(g)
repealed.²³

(2) In this Part—

S. 140(2)
repealed by
No. 6886 s. 3,
new s. 140(2)
inserted by
No. 8752
s. 6(1)(j),
substituted by
No. 9156
s. 3(1).

(a) "**evidence**" means evidence given in any
legal proceeding or coroner's inquest and
includes any ruling direction summing up
judgment or other matter in that proceeding
or inquest that is directed to be recorded and
transcribed;

S. 140(2)(a)
amended by
Nos 10257
s. 4(e)(i)(ii),
100/1995
s. 23(8)(a).

* * * * *

S. 140(2)(b)
repealed by
No. 100/1995
s. 23(8)(b).

s. 140

Evidence Act 1958
Act No. 6246/1958

S. 140(3)
inserted by
No. 9156
s. 3(1),
repealed by
No. 100/1995
s. 23(9).

* * * * *

**PART VII—OFFENCES PERJURY FORGERY FALSE
CERTIFICATES ETC.**

**141. *Persons making wilful false statements on oath,
declaration etc. guilty of perjury***

No. 3674
s. 133.

Any person who upon or in any oath examination affidavit affirmation or declaration whatsoever which is mentioned or referred to or which is required authorized or permitted in or by or under any provision of this Act wilfully and corruptly makes any false statement whether oral or in writing shall be deemed to be guilty of wilful and corrupt perjury. This section shall apply notwithstanding that such oath examination affidavit affirmation or declaration may be required authorized or permitted by or under any other Act whether passed before or after the commencement of this Act.

**142. *Forgery, using etc. false documents an indictable
offence***

No. 3674
s. 134.
S. 142
amended by
Nos 9576
s. 11(1), 9945
s. 3(3).

Any person who—

- (a) forges or counterfeits any seal or stamp or the impression of any seal or stamp whatsoever purporting to be a seal or stamp such as is mentioned or referred to in any provision of this Act;
- (b) forges or counterfeits any signature whatsoever purporting to be a signature such as is mentioned or referred to in any provision of this Act;
- (c) fraudulently alters any document whatsoever purporting to be a document such as is mentioned or referred to in any provision of this Act or any seal stamp or signature thereon or thereto;

- (d) affixes any such seal stamp or signature to any such document knowing such document to be untrue;
- (e) except for some lawful purpose drafts engrosses copies or prepares any such document knowing the same to be untrue;
- (f) without full disclosure tenders in evidence or otherwise uses any such document knowing that the seal or stamp or the impression of the seal or stamp or the signature thereon or thereto has been forged or counterfeited or is false or that such document is untrue or has become wholly or partially invalid or that such document or the seal stamp or the impression of the seal or stamp or the signature thereon or thereto has been fraudulently altered—

shall be guilty of an indictable offence and be liable to imprisonment for a term of not more than five years.

No. 3674
s. 135.
S. 143
amended by
Nos 9576
s. 11(1), 9945
s. 3(3).

143. *Printing or using documents falsely purporting to be printed by government printer an indictable offence*

Any person who prints any document whatsoever which falsely purports to be a document such as is mentioned or referred to in any provision of this Act as a document which might or should be printed by a government printer or as a document which might or would be admitted in evidence if printed by a government printer or who without full disclosure tenders in evidence or otherwise uses any such document knowing the same is not printed as it falsely purports to be shall be guilty of an indictable offence and be liable to imprisonment for a term of not more than five years.

144. *Giving false certificates an indictable offence*

Any officer or person authorized required or permitted by any provision of this Act to furnish any copies extracts or transcripts who wilfully certifies or delivers any document as being a true copy extract or transcript knowing that the same is not a true copy extract or transcript (as the case may be) shall be guilty of an indictable offence and be liable to imprisonment for a term of not more than two years.

No. 3674
s. 136.
S. 144
amended by
Nos 9576
s. 11(1), 9945
s. 3(3).

145. *Interpretation provisions to apply to this Part*

In order to ascertain for the purposes of this Part the meaning of any provision in any other Part any enactment relating to interpretation applicable to such provision in such other Part shall be taken to apply.

No. 3674
s. 137.

PART VIII—MISCELLANEOUS

No. 3674
s. 138.

S. 146
amended by
No. 110/1986
s. 140(2).

146. *Impounding documents*

Whenever any document has been or is tendered or produced before any court or person acting judicially such court or person if it or he thinks it desirable in the interests of justice so to do may direct that such document shall be impounded and kept in the custody of some officer or other proper person for such period either definite or indefinite and subject to such conditions as to such court or person seem meet: Provided that if such direction is given by the Supreme Court constituted by a Judge it shall be subject to appeal to the Full Court and if such direction is given by any other court or person it may be set aside on application to the Supreme Court which may direct on whom notice of such application shall be served and make such order as to costs as it deems just.

No. 3674
s. 139.

147. *Attesting witness*

It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

No. 3674
s. 140.

148. *Comparison of handwriting*

Comparison of a disputed writing with any writing proved to the satisfaction of the court or person having by law or by consent of parties authority to hear receive and examine evidence to be genuine shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to such court or person and the jury or assessors (if any) as evidence of the genuineness or otherwise of the writing in dispute.

149. Confession after promise or threat or purporting to be on oath

No. 3674
s. 141.

No confession which is tendered in evidence shall be rejected on the ground that a promise or threat has been held out to the person confessing, unless the judge or other presiding officer is of opinion that the inducement was really calculated to cause an untrue admission of guilt to be made; nor shall any confession which is tendered in evidence be rejected on the ground that it was made or purports to have been made on oath.

149A. Admissions of fact in criminal proceedings

S. 149A
inserted by
No. 7366 s. 6,
amended by
Nos 101/1986
s. 57,
108/1997 s.
153.

Subject to the express provisions of any Act but notwithstanding any rule of law or procedure or any practice to the contrary the accused person in any criminal proceedings or any proceedings under the **Confiscation Act 1997** may make admission of any fact or matter that is relevant in the proceedings and any person acting judicially may accept the admission as sufficient evidence of that fact or matter without further proof unless he is of opinion that it would be contrary to the interests of justice so to do having regard to all the circumstances of the case.

149AB. Agreed facts

S. 149AB
inserted by
No. 60/1993
s. 25.

- (1) In this section, "**agreed fact**" means a fact that the parties to a proceeding have agreed is not, for the purposes of the proceeding, to be disputed.
- (2) In a proceeding—
 - (a) evidence is not required to prove the existence of an agreed fact; and
 - (b) evidence may not be adduced to contradict or qualify an agreed fact—

unless the court gives leave.

- (3) Sub-section (2) does not apply unless the agreed fact—
 - (a) is stated in an agreement in writing signed by the parties or by legal practitioners representing the parties and adduced in evidence in the proceeding; or
 - (b) with the leave of the court, is stated by a party before the court with the agreement of all the other parties.

S. 149B
inserted by
No. 10231
s. 11.

149B. *Directions by judge where parties consent*

- (1) A judge may give a direction under this section and under section 149C about the trial of a person at any time after the person is arraigned on indictment or presentment before the Supreme Court or the County Court.
- (2) A judge may only give a direction under this section with the consent of the accused person and the prosecution and any other party who is, in the judge's opinion, likely to be affected by the direction.
- (3) Notwithstanding any rule of law or procedure or any practice to the contrary a judge may direct that in the interests of justice one or more of the following have effect for the purposes of the trial of a person—
 - (a) a specified fact may be proved in a specified manner which is not in accordance with the rules of evidence;
 - (b) a specified fact is to be treated as admitted or established without proof;
 - (c) a specified exhibit is to be admitted in evidence without proof of its authenticity; or

- (d) specified evidence may be read or a specified statement may be tendered without a witness being called.
- (4) Anything done in accordance with a direction given under this section has effect as it had been done in accordance with the rules of law and procedure and the practice which would apply if the direction had not been given.
- (5) In this section "**exhibit**" includes a document.

149C. *Variation or revocation of direction under section 149B*

S. 149C
inserted by
No. 10231
s. 11.

A judge may vary or revoke a direction given under section 149B—

- (a) with the consent of each person who consented to the making of the direction; or
- (b) without the consent of each person who consented to the making of the direction, if in the judge's opinion it is in the interests of a fair trial to do so.

150. *Issue of warrant when witness does not appear*

S. 150
substituted by
No. 7366 s. 6,
amended by
Nos 9554
s. 2(2),
110/1986
s. 140(2),
85/1987
s. 4(a)-(d).

Where a subpoena or summons has been issued for the attendance of a person on the hearing of a cause or matter in the Supreme Court or the County Court and—

- (a) a copy thereof has been served upon him and a reasonable sum of money paid or tendered to him for his costs and expenses in that behalf but he neglects or refuses to attend; or
- (b) he is proved to be keeping out of the way to avoid service thereof—

the Supreme Court or County Court (as the case requires) may issue a warrant to apprehend him and to bring him before the Court and may also order him to pay a fine of not more than 1 penalty unit, but no such fine shall exempt him from any other proceedings for disobeying the subpoena or summons.

No. 3674
s. 143.
S. 151
amended by
Nos 10257
s. 84(f),
57/1989
s. 3(Sch. item
67.27(a)-(c)).

151. *Abolition of extra-judicial oaths*

It shall not be lawful for any person to administer or cause or allow to be received any oath or affidavit touching any matter or thing whereof such person hath not jurisdiction or cognisance by or under some Act or ordinance in force. But nothing in this section shall be construed to extend to any oath solemn affirmation or affidavit before any person in any matter or thing touching the preservation of the peace, or the prosecution trial or punishment of offences; or touching any proceedings before the Legislative Council or Assembly or any committee thereof; nor to any oath or affidavit which may be required by the laws of any foreign or other country out of Victoria to give validity to instruments in writing designed to be used in foreign or other countries respectively.

S. 152
inserted by
No. 7366 s. 7,
amended by
Nos 7705
s. 10, 7876
s. 2(3),
34/1990
s. 6(a).

152. *Regulations*

- (1) The Governor in Council may make regulations for or with respect to prescribing allowances and expenses to be paid to Crown witnesses and interpreters—
 - (a) in criminal trials and criminal appeal proceedings in the Supreme Court and in criminal trials in the County Court;
 - (b) in criminal and quasi-criminal proceedings in the Magistrates' Court and in appeal proceedings in the County Court; and

S. 152(1)(b)
amended by
No. 57/1989
s. 3(Sch. item
67.28).

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- | | |
|--|--|
| (c) at inquests held by coroners. | S. 152(1)(c)
amended by
No. 10257
s. 84(g). |
| (2) The Governor in Council may make regulations for or with respect to— | S. 152(2)
inserted by
No. 34/1990
s. 6(b). |
| (aa) the making, use, possession, storage, access to and destruction of an audio or video recording referred to in section 37B of this Act or Schedule 5 to the Magistrates' Court Act 1989 ; and | S. 152(2)(aa)
inserted by
No. 8/1991
s. 11(2). |
| (a) prescribing classification for the purposes of section 107A; and | S. 152(2)(a)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (b) prescribing classification for the purposes of section 123C; and | S. 152(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (c) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act. | |
| 153. Transitional provisions (Crimes (Amendment) Act 1997) | S. 153
inserted by
No. 81/1997
s. 11. |
| (1) The amendments of this Act made by the Crimes (Amendment) Act 1997 apply to— | |
| (a) any trial that commences on or after 14 January 1998; and | |
| (b) any committal proceeding or hearing of a charge for an offence that commences on or after 1 January 1998— | |
-

irrespective of when the offence to which the trial, committal proceeding or hearing relates is alleged to have been committed.

- (2) For the purposes of sub-section (1)—
- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of the **Crimes Act 1958**; and
 - (b) a committal proceeding commences on the committal mention date; and
 - (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.

S. 154
inserted by
No. 21/1998
s. 5.

154. Transitional provisions (Division 2A of Part II)

- (1) The amendment of this Act made by section 4 of the **Evidence (Confidential Communications) Act 1998** applies to—
- (a) any committal proceeding or hearing of a charge for an offence that commences on or after the commencement of that section; or
 - (b) a hearing under section 5 of the **Crimes (Criminal Trials) Act 1993** that commences on or after that commencement; or
 - (c) any trial that commences on or after that commencement; or
 - (d) any civil proceeding that commences on or after that commencement—

irrespective of when the offence to which the committal proceeding, hearing, trial or civil proceeding relates is alleged to have been committed.

- (2) For the purposes of sub-section (1)—
-

-
- (a) a committal proceeding commences on the committal mention date; and
 - (b) a hearing of a charge for an offence commences on the taking of a formal plea from the accused; and
 - (c) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of the **Crimes Act 1958**.
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Sch. 1

Evidence Act 1958
Act No. 6246/1958

SCHEDULES

Sch. 1
repealed by
No. 12/1993
s. 6(b).

* * * * *

SECOND SCHEDULE

S. 12

To the governor of the gaol at [or as the case may be]
and to all members of the police force in the State of Victoria:

It is hereby ordered under the provisions of the **Evidence Act 1958**, that [here insert name of prisoner], a person now in your custody at [here insert name of place of detention] be brought before the [here insert name of court, &c.] at [insert place where court, &c., is to be holden] [or be brought to [insert place where facilities exist to enable the person to appear by audio or audio visual link within the meaning of Part IIA of that Act before that court at that place]]²⁴ on the day of 19 then and there to testify what he knows concerning the matters then to be inquired of in the hearing of [here specify name of cause or matter], and the said [here repeat name of prisoner] is to remain in the custody of the officers local gaolers and members of the police force acting under this order until the said [name of prisoner] is in due course released from custody according to law or returned to the governor of the gaol at [or as the case may be].

Dated this day of

Signature and description of Judge.

Sch. 2
amended by
Nos 7705
s. 10,
117/1986
s. 6(Sch. 1
item 1(11)),
4/1997
s. 4(2).

THIRD SCHEDULE

S. 84

This is to certify that the matter above written [*or printed as the case may be*] contained on [two] sheets [*or pages*] of paper is a true copy of a [by-law] of "The _____, and that we have informed ourselves of the legislative requirements necessary to the giving validity to such by-law and as to their observance and believe that such requirements have been fulfilled, and we further certify that such [by-law] came into force on the day of _____ in the year of our Lord One Thousand nine hundred and _____.

Sealed in our presence²⁵ this _____ day of _____ in the year of our Lord One thousand nine hundred and _____

(L.S.)

Sch. 4
amended by
No. 7703 s. 5,
repealed by
No. 51/1989
s. 144(2)(q).

* * * * *

NOTES

1. General Information

The **Evidence Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 892.

2. Table of Amendments

This Version incorporates amendments made to the **Evidence Act 1958** by Acts and subordinate instruments.

Statute Law Revision Act 1959, No. 6505/1959

Assent Date: 5.5.59
Commencement Date: 1.4.59: s. 1(2)
Current State: All of Act in operation

Evidence (Amendment) Act 1959, No. 6540/1959

Assent Date: 29.9.59
Commencement Date: 29.9.59
Current State: All of Act in operation

Social Welfare Act 1960, No. 6651/1960

Assent Date: 15.6.60
Commencement Date: S. 58 on 11.7.60: Government Gazette 6.7.60 p. 2210
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Statute Law Revision Act 1960, No. 6716/1960

Assent Date: 21.12.60
Commencement Date: 1.4.59: s. 3
Current State: All of Act in operation

Evidence (Children) Act 1961, No. 6758/1961

Assent Date: 26.4.61
Commencement Date: 26.4.61
Current State: All of Act in operation

Evidence (Amendment) Act 1962, No. 6855/1962

Assent Date: 11.4.62
Commencement Date: 11.4.62
Current State: All of Act in operation

Subordinate Legislation Act 1962, No. 6886/1962

Assent Date: 8.5.62
Commencement Date: 1.8.62: Government Gazette 4.7.62 p. 2314
Current State: All of Act in operation

Statute Law (Further Revision) Act 1962, No. 6961/1962

Assent Date: 18.12.62
Commencement Date: 18.12.62: subject to s. 3
Current State: All of Act in operation

Evidence (Affidavits) Act 1963, No. 7039/1963

Assent Date: 12.11.63
Commencement Date: 12.11.63
Current State: All of Act in operation

Public Lands and Works Act 1964, No. 7228/1964

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Assent Date: 15.12.64
Commencement Date: 15.3.65: Government Gazette 11.3.65 p. 557
Current State: All of Act in operation

Evidence (Reproductions) Act 1965, No. 7324/1965

Assent Date: 7.12.65
Commencement Date: 1.3.66: Government Gazette 23.2.66 p. 652
Current State: All of Act in operation

Evidence (Amendment) Act 1965, No. 7366/1965

Assent Date: 21.12.65
Commencement Date: 21.12.65
Current State: All of Act in operation

Evidence (Medical Evidence) Act 1966, No. 7418/1966

Assent Date: 24.5.66
Commencement Date: 1.7.66: Government Gazette 22.6.66 p. 2205
Current State: All of Act in operation

Evidence (Foreign Tribunals) Act 1966, No. 7460/1966

Assent Date: 22.11.66
Commencement Date: 22.11.66
Current State: All of Act in operation

Juries Act 1967, No. 7651/1967

Assent Date: 19.12.67
Commencement Date: S. 2(1)(Sch. 1 Pt 2 item 4) on 1.1.69: Government Gazette 4.12.68 p. 3919
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Evidence (Attestations) Act 1968, No. 7660/1968

Assent Date: 26.3.68
Commencement Date: 26.3.68
Current State: All of Act in operation

Abolition of Bailiwicks Act 1968, No. 7703/1968

Assent Date: 15.10.68
Commencement Date: 1.1.69: Government Gazette 4.12.68 p. 3920
Current State: All of Act in operation

County Court (Jurisdiction) Act 1968, No. 7705/1968

Assent Date: 15.10.68
Commencement Date: 1.1.69: Government Gazette 4.12.68 p. 3919
Current State: All of Act in operation

Mines (Abolition of Courts) Act 1969, No. 7840/1969

Assent Date: 20.5.69
Commencement Date: 20.5.69
Current State: All of Act in operation

Justices (Amendment) Act 1969, No. 7876/1969

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Assent Date: 25.11.69
Commencement Date: All of Act (except ss 3, 5, 6, 7(k)(m)–(o)) on 1.4.70;
ss 3, 5, 6, 7(k)(m)–(o) on 1.7.70: Government Gazette
25.2.70 p. 463
Current State: All of Act in operation

Evidence (Bankers' Books) Act 1969, No. 7881/1969

Assent Date: 25.11.69
Commencement Date: 25.11.69
Current State: All of Act in operation

Evidence (Boards and Commissions) Act 1970, No. 7933/1970

Assent Date: 25.2.70
Commencement Date: 25.2.70
Current State: All of Act in operation

Evidence (Scientific Tests) Act 1970, No. 8003/1970

Assent Date: 17.11.70
Commencement Date: 1.3.71: Government Gazette 17.2.71 p. 389
Current State: All of Act in operation

Evidence (Registration of Commissioners) Act 1971, No. 8139/1971

Assent Date: 4.5.71
Commencement Date: 1.12.72: Government Gazette 1.3.72 p. 501
Current State: All of Act in operation

Statute Law Revision Act 1971, No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71
Current State: All of Act in operation

Evidence (Boards and Commissions) Act 1971, No. 8190/1971

Assent Date: 30.11.71
Commencement Date: 30.11.71
Current State: All of Act in operation

Evidence (Documents) Act 1971, No. 8228/1971

Assent Date: 14.12.71
Commencement Date: 14.12.71
Current State: All of Act in operation

Evidence Act 1972, No. 8327/1972

Assent Date: 28.11.72
Commencement Date: 1.3.74: Government Gazette 13.2.74 p. 377
Current State: All of Act in operation

Companies (Interstate Corporate Affairs Commission) Act 1974, No. 8565/1974

Assent Date: 14.5.74
Commencement Date: 1.7.74: Government Gazette 29.5.74 p. 1869
Current State: All of Act in operation

Courts Administration Act 1975, No. 8752/1975

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Assent Date: 18.11.75
Commencement Date: 1.12.75: Government Gazette 26.11.75 p. 3888
Current State: All of Act in operation

Companies Act 1975, No. 8787/1975

Assent Date: 2.12.75
Commencement Date: All of Act (*except* s. 28) on 1.3.76; s. 28 on 24.2.76:
Government Gazette 24.2.76 p. 575
Current State: All of Act in operation

Rape Offences (Proceedings) Act 1976, No. 8950/1976

Assent Date: 14.12.76
Commencement Date: 1.7.77: Government Gazette 22.6.77 p. 1712
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77: subject to s. 2(2)
Current State: All of Act in operation

Commissioners and Justices Act 1977, No. 9042/1977

Assent Date: 22.11.77
Commencement Date: 1.1.78: s. 1(2)
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9059/1977

Assent Date: 29.11.77
Commencement Date: 29.11.77: subject to s. 2(2)
Current State: All of Act in operation

Evidence (Amendment) Act 1978, No. 9156/1978

Assent Date: 30.5.78
Commencement Date: 16.9.79: Government Gazette 5.9.79 p. 2791
Current State: All of Act in operation

Crimes (Competence and Compellability of Spouse Witnesses) Act 1978, No. 9230/1978

Assent Date: 19.12.78
Commencement Date: 1.7.79: Government Gazette 4.4.79 p. 901
Current State: All of Act in operation

Imperial Law Re-enactment Act 1980, No. 9407/1980

Assent Date: 20.5.80
Commencement Date: 2.7.80: Government Gazette 2.7.80 p. 2257
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80: see s. 6(2)
Current State: All of Act in operation

Crimes (Sexual Offences) Act 1980, No. 9509/1980

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Assent Date: 23.12.80
Commencement Date: 1.3.81: Government Gazette 4.2.81 p. 338
Current State: All of Act in operation

Penalties and Sentences Act 1981, No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 2(2)(Sch. 2 items 66–69) on 1.9.81: Government Gazette 26.8.81 p. 2700
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Crimes (Classification of Offences) Act 1981, No. 9576/1981

Assent Date: 26.5.81
Commencement Date: 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Companies (Administration) Act 1981, No. 9698/1981

Assent Date: 5.1.82
Commencement Date: Ss 1, 2, 15 on 5.1.82; rest of Act on 1.7.82: Government Gazette 30.6.82 p. 2108
Current State: All of Act in operation

Companies (Consequential Amendments) Act 1981, No. 9699/1981

Assent Date: 5.1.82
Commencement Date: Ss 9, 14, 18 on 1.7.81: s. 2(2); s. 19 on 1.10.81: s. 2(3); s. 22 on 5.1.82: s. 2(4); rest of Act on 1.7.82: s. 2(1)
Current State: All of Act in operation

Associations Incorporation Act 1981, No. 9713/1981

Assent Date: 5.1.82
Commencement Date: 1.7.83: Government Gazette 25.5.83 p. 1238
Current State: All of Act in operation

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83: subject to s. 2(2)
Current State: All of Act in operation

Penalties and Sentences (Amendment) Act 1983, No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 2 on 1.9.83: s. 1(14); s. 8 never proclaimed, repealed by No. 10096; rest of Act on 20.12.83: Government Gazette 14.12.83 p. 4035
Current State: All of Act in operation

Evidence (Amendment) Act 1984, No. 10074/1984

Assent Date: 15.5.84
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2120
Current State: All of Act in operation

Crimes (General Amendment) Act 1984, No. 10084/1984

Evidence Act 1958

Act No. 6246/1958

Assent Date: 22.5.84
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2119
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Accident Compensation Act 1985, No. 10191/1985

Assent Date: 30.7.85
Commencement Date: S. 276(Sch. 2) on 31.8.85 (at 4 p.m.): Government Gazette 30.8.85 p. 3401
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Evidence (Amendment) Act 1985, No. 10231/1985

Assent Date: 10.12.85
Commencement Date: 1.2.86: Government Gazette 22.1.86 p. 144
Current State: All of Act in operation

Coroners Act 1985, No. 10257/1985

Assent Date: 10.12.85
Commencement Date: Ss 1–3, Pt 9 on 12.2.86: Government Gazette 12.2.86 p. 382; rest of Act on 1.6.86: Government Gazette 30.4.86 p. 1115
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: S. 30(Sch.) on 1.7.86: Government Gazette 25.6.86 p. 2180
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Crimes (Amendment) Act 1986, No. 37/1986

Assent Date: 20.5.86
Commencement Date: 1.7.86: Government Gazette 25.6.86 p. 2239
Current State: All of Act in operation

Crimes (Confiscation of Profits) Act 1986, No. 101/1986

Assent Date: 16.12.86
Commencement Date: 1.8.87: Government Gazette 22.7.87 p. 1924
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Corrections Act 1986, No. 117/1986

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Assent Date: 23.12.86
Commencement Date: S. 6(Sch. 1 item 1(11)) on 1.3.88: Government Gazette 24.2.88 p. 363
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Road Safety Act 1986, No. 127/1986

Assent Date: 23.12.86
Commencement Date: Sch. 4 item 9 on 1.3.87: Government Gazette 25.2.87 p. 445
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Evidence (Neighbourhood Mediation Centres) Act 1987, No. 42/1987

Assent Date: 19.5.87
Commencement Date: 2.9.87: Government Gazette 2.9.87 p. 2328
Current State: All of Act in operation

Accident Compensation (Amendment) Act 1987, No. 83/1987

Assent Date: 1.12.87
Commencement Date: S. 6(2) on 30.7.85: s. 2(2); s. 45(1) on 1.1.88: s. 2(3); rest of Act on 1.12.87: s. 2(1)
Current State: All of Act in operation

Courts (Amendment) Act 1987, No. 85/1987

Assent Date: 1.12.87
Commencement Date: S. 6 on 1.12.87: s. 2(2); rest of Act on 13.1.88: Government Gazette 13.1.88 p. 35
Current State: All of Act in operation

State Bank Act 1988, No. 29/1988

Assent Date: 17.5.88
Commencement Date: 9.6.88: Government Gazette 8.6.88 p. 1582
Current State: All of Act in operation

Local Government (Consequential Provisions) Act 1989, No. 12/1989

Assent Date: 9.5.89
Commencement Date: Sch. 2 items 41.1–41.5 on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Magistrates' Court Act 1989, No. 51/1989 (as amended by No. 34/1990)

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Assent Date: 14.6.89
Commencement Date: S. 144(2) on 1.9.90: Government Gazette 25.7.90 p. 2216
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Courts (Children's and Magistrates') Act 1990, No. 34/1990

Assent Date: 13.6.90
Commencement Date: S. 6 on 1.9.90: Government Gazette 25.7.90 p. 2216
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Evidence (Amendment) Act 1990, No. 57/1990

Assent Date: 13.11.90
Commencement Date: Ss 8–10 on 12.12.90: Special Gazette (No. 63) 11.12.90 p. 1; rest of Act on 1.6.91: Government Gazette 29.5.91 p. 1386
Current State: All of Act in operation

Courts (Amendment) Act 1990, No. 64/1990

Assent Date: 20.11.90
Commencement Date: S. 17 on 1.1.91: Government Gazette 19.12.90 p. 3750
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

State Bank (Succession of Commonwealth Bank) Act 1990, No. 94/1990

Assent Date: 18.12.90
Commencement Date: S. 40(5) on 1.1.91: Special Gazette (No. 73) 31.12.90 p. 1
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Crimes (Sexual Offences) Act 1991, No. 8/1991 (as amended by No. 81/1991)

Assent Date: 16.4.91
Commencement Date: Ss 7, 8, 10 on 5.8.91: Government Gazette 5.8.91 p. 2026; s. 11(1A) on 1.2.92: Government Gazette 22.1.92 p. 114; ss 11(1)(2) on 20.12.94: Government Gazette 15.12.94 p. 3308; s. 9 on 1.7.98
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

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Local Government (Rating) Act 1991, No. 78/1991 (as amended by No. 22/1992)

Assent Date: 3.12.91
Commencement Date: S. 26 on 1.11.89: s. 2(1)
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Crimes (Rape) Act 1991, No. 81/1991

Assent Date: 3.12.91
Commencement Date: S. 4 on 1.1.92: Government Gazette 18.12.91 p. 3486; s. 5 on 1.2.92: Government Gazette 22.1.92 p. 114
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Evidence (Unsworn Evidence) Act 1993, No. 12/1993

Assent Date: 11.5.93
Commencement Date: 11.5.93
Current State: All of Act in operation

Crimes (Criminal Trials) Act 1993, No. 60/1993

Assent Date: 8.6.93
Commencement Date: Ss 24, 25 on 1.7.93: Government Gazette 1.7.93 p. 1735
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Evidence (Proof of Offences) Act 1993, No. 74/1993

Assent Date: 26.10.93
Commencement Date: Ss 1, 2 on 26.10.93: s. 2(1); rest of Act on 1.1.94: s. 2(2)
Current State: All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 20(4) on 7.12.93: s. 2(4)
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 item 25) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

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Magistrates' Court (Amendment) Act 1994, No. 33/1994

Assent Date: 31.5.94
Commencement Date: S. 17(2) on 24.10.94: Government Gazette 20.10.94 p. 2789
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Public Prosecutions Act 1994, No. 43/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3) on 7.6.94: s. 2(1); rest of Act on 1.7.94: s. 2(3)
Current State: All of Act in operation

Transport Accident (General Amendment) Act 1994, No. 84/1994

Assent Date: 29.11.94
Commencement Date: S. 62 on 18.12.94: Special Gazette (No. 96) 13.12.94 pp 1, 2
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Prostitution Control Act 1994, No. 102/1994

Assent Date: 13.12.94
Commencement Date: Ss 1, 2 on 13.12.94: s. 2(1); rest of Act on 13.6.95: s. 2(3)
Current State: All of Act in operation

Legal Aid Commission (Amendment) Act 1995, No. 48/1995

Assent Date: 14.6.95
Commencement Date: S. 11(4) on 14.12.95: s. 2(3)
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: Ss 22, 23 on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 29) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Evidence (Audio Visual and Audio Linking) Act 1997, No. 4/1997

Assent Date: 22.4.97
Commencement Date: Ss 3, 4 on 22.12.97: Government Gazette 18.12.97 p. 3612
Current State: This information relates only to the provision/s amending the **Evidence Act 1958**

Veterinary Practice Act 1997, No. 58/1997

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Assent Date: 28.10.97
Commencement Date: S. 96(Sch. item 4) on 17.3.98: Government Gazette
12.3.98 p. 520
Current State: This information relates only to the provision/s
amending the **Evidence Act 1958**

Crimes (Amendment) Act 1997, No. 81/1997

Assent Date: 2.12.97
Commencement Date: Ss 9–11 on 1.1.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Evidence Act 1958**

Legal Practice (Amendment) Act 1997, No. 102/1997

Assent Date: 16.12.97
Commencement Date: S. 49(Sch. item 2) on 16.12.97: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Evidence Act 1958**

Confiscation Act 1997, No. 108/1997

Assent Date: 23.12.97
Commencement Date: S. 153 on 1.7.98
Current State: This information relates only to the provision/s
amending the **Evidence Act 1958**

Evidence (Confidential Communications) Act 1998, No. 21/1998

Assent Date: 5.5.98
Commencement Date: Ss 1–3 on 5.5.98: s. 2(1); ss 4, 5 on 1.9.98: s. 2(3)
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Evidence Act 1958**

3. Explanatory Details

¹ Pt 1 Div. 1C: Section 7 of the **Evidence (Amendment) Act 1990**, No. 57/1990 reads as follows:

7. Repeals

- (1) The following Acts of the Parliament of the United Kingdom are repealed in so far as they are part of the law of Victoria:

The Foreign Tribunals Evidence Act 1856

The Evidence by Commission Act 1859

The Evidence by Commission Act 1885

- (2) Nothing in this section affects—
- (a) any application to any court or judge which is pending at the commencement of this Act;
 - (b) any certificate given for the purposes of such an application;
 - (c) any power to make an order on such an application; or
 - (d) the operation or enforcement of any order made on such an application.

² S. 12: Sections 11, 12 of the **Evidence (Audio Visual and Audio Linking) Act 1997**, No. 4/1997 read as follows:

11. Construction of references to bringing person before court

A reference in any Act or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a person appearing before, or being brought before, a court includes a reference to a person appearing before, or being brought to a place where facilities exist to enable a person to appear before, the court by audio or audio visual link within the meaning

of Part IIA of the **Evidence Act 1958** in accordance with Division 2 or 3 of that Part.

12. Transitional provisions

- (1) An amendment made by a provision of this Act to the **Evidence Act 1958**, the **Supreme Court Act 1986**, the **County Court Act 1958**, the **Magistrates' Court Act 1989** or the **Children and Young Persons Act 1989** applies to a proceeding that is commenced to be heard on or after the twenty-first day after the commencement of that amendment, irrespective of when the proceeding was commenced or when any offence to which the proceeding relates is alleged to have been committed.
- (2) For the purposes of sub-section (1) in its application to criminal proceedings—
 - (a) a trial is commenced to be heard on arraignment of the accused person; and
 - (b) a hearing of a charge for an offence is commenced to be heard on the taking of a formal plea from the accused person.

³ S. 15: See section 30.

⁴ S. 18: See note 3.

⁵ S. 21D: Section 12 of the **Legal Aid Commission (Amendment) Act 1995**, No. 48/1995 reads as follows:

12. Transitional—Evidence Act

Division 6 of Part I of the **Evidence Act 1958** as amended by section 11 of this Act applies to a proposed application for legal aid prepared before the commencement of section 11.

⁶ S. 21E: See note 5.

⁷ S. 21H: See note 5.

⁸ Pt 1 Div. 8: Section 9 of the **Evidence (Amendment) Act 1990**, No. 57/1990 reads as follows:

9. Transitional

- (1) An organisation that, immediately before the commencement of this section, was a neighbourhood mediation centre within the meaning of Division 8 of Part I of the Principal Act is deemed to be a dispute settlement centre and to be the same body after as before that commencement.
- (2) A person who, immediately before the commencement of this section, was a neighbourhood mediator within the meaning of Division 8 of Part I of the Principal Act is deemed, on that commencement, to be a mediator within the meaning of that Division as amended by this Act.
- (3) An Order or notice made or given under Division 8 of Part I of the Principal Act in force immediately before the commencement of this section may be amended or revoked by an Order or notice made or given under that Division after that commencement.

⁹ S. 25: Section 7 of the **Evidence (Unsworn Evidence) Act 1993**, No. 12/1993 reads as follows:

7. Transitional

- (1) The amendments made by this Act to the **Evidence Act 1958**, the **Crimes Act 1958** and the **Magistrates' Court Act 1989** apply to the trial or hearing of a charge for an offence that commences on or after the commencement of this Act, irrespective of when the offence was committed or alleged to have been committed.
 - (2) For the purposes of sub-section (1)—
-

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- (a) a trial commences on arraignment of the accused;
- (b) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.

¹⁰ S. 26: See section 399 of the **Crimes Act 1958**.

¹¹ Pt 2A: See note 2.

¹² S. 42J: Examples of proceedings, apart from the trial or hearing of the charge, to which Division 3 applies are proceedings with respect to bail or the remand of the accused person in custody, committal proceedings, directions hearings under section 5 of the **Crimes (Criminal Trials) Act 1993**, proceedings under the **Crimes (Confiscation of Profits) Act 1986** and proceedings under Division 1 or 2 of Part 4 of the **Sentencing Act 1991**.

¹³ S. 79(1): See section 150 of the Evidence Act 1995 of the Commonwealth.

As to signatures of members or the Secretary of the Adult Parole Board or officers, see the **Corrections Act 1986**, sections 68(1) and 106.

As to the signatures of the Minister and the Director-General of Community Welfare Services, see section 4A(5) of the **Community Services Act 1970**.

As to the signatures of the Mayor or Chief Executive Officer of any council under the **Health Act 1958**, see section 442 of that Act.

As to signatures of the Minister, Secretary or authorized officer under the **Labour and Industry Act 1958**, see section 191(4) of that Act.

¹⁴ S. 89: See section 18 of the **Magistrates' Court Act 1989**.

¹⁵ Pt 3 Div 9:

Pt 3 Div. 9 (Heading) repealed by No. 8228 s. 5(1).

S. 90 amended by Nos 7366 s. 3, 7881 s. 2(a)(i)(ii)(b), repealed by No. 8228 s. 5(1).

Ss 91–97 repealed by No. 8228 s. 5(1).

S. 97A inserted by No. 7881 s. 3, repealed by No. 8228 s. 5(1).

S. 98 repealed by No. 8228 s. 5(1).

¹⁶ S. 90: Section 4 of the **Evidence (Proof of Offences) Act 1993**, No. 74/1993 reads as follows:

4. Transitional

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The amendment made by section 3 applies to civil proceedings commencing on or after 1 January 1994.

¹⁷ S. 91: See note 15.

¹⁸ Pt 4 Div. 9: Section 11(4)(5)(6) of the **Evidence (Amendment) Act 1984**, No. 10074/1984 reads as follows:

11. Amendment of No. 6246

- (4) On and from the commencement of this section—
- (a) any person appointed to be a commissioner of the Supreme Court for taking affidavits by commission under section 113(1) of the Principal Act as in force immediately before that commencement shall be deemed to have been appointed a commissioner for taking affidavits under section 114(1) of the Principal Act as amended by this section;
 - (b) any person appointed to be a commissioner of the Supreme Court for taking affidavits by commission under section 113(1) of the Principal Act as in force immediately before that commencement may notwithstanding that the person was empowered and authorized to act only in a particular place or places in or out of Victoria act as a commissioner for taking affidavits under the Principal Act as amended by this section in any place in or out of Victoria;
 - (c) any person appointed to be a commissioner for taking declarations and affidavits under section 118 of the Principal Act as in force immediately before that commencement shall be deemed to have been appointed a commissioner for taking affidavits under section 114(1) of the Principal Act as amended by this section;

- (d) any registration or renewal of registration of a commissioner under section 122B or 122D (as the case requires) of the Principal Act as in force immediately before that commencement shall remain in force for the period specified in the Principal Act as so in force in respect of that registration; and
 - (e) a reference in any Act or in any order in council regulation rule or by-law under any Act to a commissioner of the Supreme Court for taking affidavits or a commissioner for taking declarations and affidavits shall be deemed and taken to refer to a commissioner for taking affidavits under the Principal Act as amended by this section.
- (5) Any person deemed by sub-section (4)(a) to be a commissioner for taking affidavits—
- (a) may—
 - (i) without being registered as required by section 118 of the Principal Act as amended by this section, act as such a commissioner for six months after the commencement of this section; and
 - (ii) within six months after the commencement of this section, apply for registration under section 118 of the Principal Act as amended by this section in all respects as if the person had been appointed a commissioner for taking affidavits under section 114(1) of the Principal Act as amended by this section; and
 - (b) subject to sub-section (6), shall not act as such a commissioner after the expiration of six months after the commencement of this
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section without being registered under section 118 of the Principal Act as amended by this section.

- (6) A commissioner of the Supreme Court for taking affidavits empowered and authorized under the Principal Act as in force immediately before the commencement of this section to act only in a place out of Victoria may continue to act only in that place as a commissioner for taking affidavits without being registered under section 118 of the Principal Act as amended by this section.

¹⁹ S. 126: See section 103.

²⁰ S. 128: See note 18.

²¹ Ss 132–133:

S. 132 substituted by Nos 8752 s. 6(1)(c), 57/1989 s. 3(Sch. item 67.26), repealed by No. 100/1995 s. 23(2).

S. 132A inserted by No. 8003 s. 3(b), amended by Nos 8752 s. 6(1)(d), 57/1989 s. 3(Sch. item 67.26), repealed by No. 100/1995 s. 23(2).

No. 5877 s. 2 [125].

S. 133 amended by Nos 8003 s. 3(c), 9156 s. 3(2)(c), repealed by No. 100/1995 s. 23(2).

²² Ss 138, 139:

S. 138 repealed by No. 8752 s. 6(1)(g).

No. 5877 s. 2 [131].

S. 139 amended by Nos 8752 s. 6(1)(h), 10231 s. 10, 57/1989 s. 3(Sch. item 67.26), repealed by No. 100/1995 s. 23(6).

²³ Ss 140(1)(c)–140(1)(g):

S. 140(1)(c) inserted by No. 8752 s. 6(1)(i), repealed by No. 100/1995 s. 23(7)(c).

S. 140(1)(d) inserted by No. 8752 s. 6(1)(i), amended by No. 10257 s. 84(d), repealed by No. 100/1995 s. 23(7)(c).

S. 140(1)(e)–(g) inserted by No. 8752 s. 6(1)(i), repealed by No. 100/1995 s. 23(7)(c).

²⁴ Schedule 2: See note 2.

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²⁵ Schedule 3: The method of affixing the seal and of attesting thereto differs according as the by-law is a by-law of (i) a municipal corporation; (ii) any other corporation. See section 84.

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NOTE:

This index does not form part of the **Evidence Act 1958** and is provided for convenience of reference only.