

**Version No. 153**  
**Evidence Act 1958**  
**No. 6246 of 1958**

Version incorporating amendments as at 1 July 2007

**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
1 Short title and commencement	1
2 <i>Repealed</i>	1
3 Definitions	1
<b>PART I—THE MEANS OF OBTAINING EVIDENCE</b>	<b>6</b>
<b>Division 1—Orders and commissions to examine witnesses</b>	<b>6</b>
4 Order to examine witnesses	6
5 Exclusion of evidence in criminal proceeding	8
6 Operation of other laws	8
7–9 <i>Repealed</i>	8
<b>Division 1A—Examination of witnesses abroad</b>	<b>8</b>
9A Definitions	8
9B Proceedings in superior courts	9
9C Proceedings in inferior courts	12
9D Exclusion of evidence in criminal proceeding	12
9E Operation of other laws	13
<b>Division 1B—Examination of witnesses outside the State but within Australia</b>	<b>13</b>
9F Application of Division	13
9G Definitions	13
9H Proceedings in superior courts	14
9I Proceedings in inferior courts	17
9J Exclusion of evidence in criminal proceedings	17
9K Operation of other laws	18
<b>Division 1C—Taking of evidence for foreign and Australian courts</b>	<b>18</b>
9L Definitions	18
9M Application to the Supreme Court for assistance in obtaining evidence for proceedings in other court	19
9N Power of the Supreme Court to give effect to application for assistance	19

<i>Section</i>	<i>Page</i>
9O Privilege of witnesses	21
9P Offence	22
9Q Operation of other laws	22
<b>Division 2—Subpoenas etc. and examination without subpoena</b>	<b>22</b>
10 Subpoena and summonses to witnesses	22
11 Persons present may be examined without a subpoena	23
<b>Division 3—Prisoners</b>	<b>23</b>
12 Prisoner may be brought before court to give evidence without writ of habeas corpus	23
<b>Division 4—Inspection of property</b>	<b>24</b>
13 Party may be ordered to allow inspection of realty or personalty	24
<b>Division 5—Boards appointed and commissions issued by the Governor in Council</b>	<b>25</b>
14 Power to send for persons and papers	25
15 Power of member of board to examine upon oath	25
16 Penalty for non-attendance or refusing to give evidence etc.	26
17 Power to send for witnesses and documents	26
18 Power of commissioner to examine upon oath etc.	27
19 Penalty for non-attendance, refusing to give evidence etc.	27
19A Application of Division	27
19B Public may be excluded in certain circumstances	28
19C Incriminating answers	29
19D Legal professional privilege	30
19E Powers of entry, inspection and possession	30
20 Chairman to report to law officer if witness fails to attend etc.	31
20A Summons to require continuous attendance	33
21 Allowances to witnesses	33
21A Privileges and immunities in relation to inquiries	33
21B Express reference necessary to include section 21A	34
21C Sections 20 and 20A to apply in certain cases	34
<b>Division 6—Disclosure of information relating to applications for legal aid</b>	<b>35</b>
21D Definitions	35
21E Disclosure of information etc. relating to proposed applications	37
21F Disclosure of information etc. relating to applications	38
21G Disclosure of information etc. where applicant has died	38
21H Application of this Division	39
<b>Division 7—Family mediations</b>	<b>39</b>
21I Definitions	39
21J Admissions etc. made at mediation conferences	40

<i>Section</i>	<i>Page</i>
<b>Division 8—Dispute settlement centres</b>	<b>40</b>
21K Definitions	40
21L Admissions etc. at mediation conferences	41
21M Confidentiality	41
21N Exoneration from liability	42
<b>PART II—WITNESSES</b>	<b>43</b>
<b>Division 1—Who may testify</b>	<b>43</b>
22 Witness not to be incapacitated by crime or interest	43
23 Evidence of children and persons with a cognitive impairment	43
23A <i>Repealed</i>	45
24 Parties and husbands and wives may be witnesses	46
25 Abolition of accused's right to make unsworn statement or to give unsworn evidence	46
<b>Division 2—Privileges disabilities and obligations of witnesses</b>	<b>46</b>
26 Exceptions as to criminal cases	46
27 Communications to husband or wife privileged	47
28 Confessions to clergymen and medical men	47
29 Where witness must answer questions which disgrace or criminate	48
30 Statements made by witness before board or commission not to be used against witness	49
31 Admissibility of evidence or statements as to access by husband or wife	49
32 Compellability of parties and witnesses regarding evidence relating to or establishing adultery	50
32A Documents relating solely to party's case	50
<b>Division 2A—Confidential communications</b>	<b>50</b>
32AB Guiding principles	50
32B Definitions	51
32C Exclusion of evidence of confidential communications	52
32D Restriction on granting leave	54
32E Limitations on privilege	56
32F Ancillary orders available on a granting of leave	57
32G Operation of Division	58
<b>Division 3—Examination and cross-examination of witnesses</b>	<b>58</b>
33 Witness may be questioned as to previous conviction	58
34 Adverse witness may be contradicted by party calling witness	59
35 Evidence of previous statement of witness	59
36 Witness may be cross-examined as to written statements without producing them	59
37 Cross-examination as to credit	60

<i>Section</i>	<i>Page</i>
37A Special rules of evidence in relation to certain offences which relate to rape	61
37B Use of recorded evidence-in-chief in certain proceedings	66
37C Alternative arrangements for giving evidence in certain proceedings	67
37CAA Alternative arrangements for giving evidence by certain complainants in certain proceedings	70
37CA Special rules for cross-examination of protected witnesses	72
37D Video link evidence from overseas in certain proceedings	75
37E Evidence of specialised knowledge in certain cases	77
38 Saving existing rights	77
39 Indecent or scandalous questions	77
40 Questions intended to insult or annoy	78
41 Prohibited questions not to be published	78
<b>Division 3AA—Examination and cross-examination of certain witnesses</b>	<b>78</b>
41A Definition	78
41B Application of Division	78
41C Evidence of specialised knowledge to determine competency	79
41D Evidence of previous representations made by child complainants	79
41E Alternative arrangements for giving evidence in certain proceedings by child complainants or complainants with a cognitive impairment	80
41F Improper questions	82
41G Pre-recording evidence at special hearing	83
41H Use of pre-recorded evidence	85
<b>Division 3A—Witness orders</b>	<b>87</b>
42 Victim who is a witness entitled to be present in court unless the court otherwise orders	87
<b>Division 4—Manner of giving evidence</b>	<b>87</b>
42A Form of evidence	87
42B Manner of giving voluminous or complex evidence	88
<b>PART IIAA—WITNESS IDENTITY PROTECTION</b>	<b>89</b>
<b>Division 1—Introductory</b>	<b>89</b>
42BA Definitions	89
<b>Division 2—Witness identity protection certificates for local operatives</b>	<b>94</b>
42BB Giving witness identity protection certificate	94
42BC Statutory declaration by local operative	95
42BD Form of witness identity protection certificate	96

<i>Section</i>	<i>Page</i>
42BE Protection of decision to give certificate	98
42BF Cancellation of witness identity protection certificate	98
42BG Permission to give information disclosing operative's identity etc.	99
42BH Disclosure offences	100
42BI Reports about witness identity protection certificates	101
42BJ Delegation	102
<b>Division 3—Interstate witness identity protection certificates</b>	<b>103</b>
42BK Application of Division	103
42BL Filing and notification	104
42BM Effect of interstate witness identity protection certificate	104
42BN Orders to protect interstate operative's identity etc.	106
42BO Disclosure of interstate operative's identity to presiding officer	106
42BP Application for disclosure of interstate operative's identity etc.	107
42BQ Suppression and protection orders	108
42BR Directions to jury	109
42BS Disclosure offences	110
<b>PART IIA—USE OF AUDIO VISUAL AND AUDIO LINKS</b>	<b>112</b>
<b>Division 1—Definitions</b>	<b>112</b>
42C Definitions	112
<b>Division 2—Persons other than accused</b>	<b>114</b>
42D Application of Division	114
42E Appearance, etc. by audio visual link or audio link	114
42F Special provisions applicable to certain proceedings involving children	115
42G Technical requirements	117
42H Costs	118
42I Certain other laws not affected	119
<b>Division 3—Appearance by accused persons</b>	<b>119</b>
42J Application of Division	119
42K Appearance of adult accused person before court	119
42L Making of direction for physical appearance in section 42K(1) proceedings	121
42M Making of direction for audio visual appearance in section 42K(2) proceedings	122
42N Application for making of direction under section 42K(4)	124
42O Appearance before court of an accused person who is a child	125
42P Making of direction for audio visual appearance by child	125
42Q Practice directions	127

<i>Section</i>	<i>Page</i>
42R Requirements for audio visual appearance by accused	128
42S Protection of communication between accused and legal representative	128
42T Application of <b>Surveillance Devices Act 1999</b>	129
<b>Division 4—General</b>	<b>129</b>
42U Putting documents to a remote person	129
42V Direction to jury in criminal trial	130
42W Application of laws about witnesses, etc.	130
42X Arraignment	131
42Y Administration of oaths and affirmations	131
<b>PART III—PROOF OF DOCUMENTS, PROOF OF FACTS BY DOCUMENTS AND DOCUMENT UNAVAILABILITY</b>	<b>132</b>
<b>Division 1—Introductory</b>	<b>132</b>
43 Provisions to be additional	132
44 Provisions relating to evidence apply to all persons acting judicially	132
45 Copies admissible without further proof of sealing, signing etc.	132
46 Effect of copies same as original	133
47 No proof necessary that document printed by government printer	133
<b>Division 2—General</b>	<b>134</b>
48 British and foreign treaties may be proved by copies	134
49 British and foreign wills, judgments etc. may be proved by copies	134
50 Mode of proving Royal proclamations Orders of Privy Council or rules etc. of Her Majesty's Imperial Government	134
51 Documents admissible in England, Wales or Ireland without proof to be equally admissible in Victoria	135
52 Register of vessels to be proved by original or copy	135
<b>Division 2A—Reproductions of documents</b>	<b>136</b>
53 Definitions	136
53A Certified reproductions of certain public documents admissible without further proof	137
53B Admissibility of reproductions of business documents destroyed, lost or unavailable	139
53C Attorney-General may approve machines for micro-filming etc.	140
53D Proof where document processed by independent processor	141
53E Affidavit or declaration of maker of print from micro-film etc. to be evidence	142
53F Proof of destruction of documents etc.	143
53G Certified copy of affidavit or declaration to be admissible	143

<i>Section</i>	<i>Page</i>
53H One affidavit or declaration sufficient where series of documents copied	144
53J Reproductions not to be admitted as evidence unless negative in existence etc.	145
53K Changes in colour or tone	147
53L Notice to produce not required	147
53M Presumptions as to ancient documents	147
53N Reproductions made in other States etc.	147
53P Judicial notice	148
53Q Micro-film etc. may be preserved in lieu of document	148
53R Factors determining admissibility	149
53S Estimation of importance of reproduction rendered admissible	149
53T Interpretation of provisions of this Division	150
<b>Division 3—Admissibility and effect of documentary evidence</b>	<b>150</b>
54 Saving	150
55 Admissibility of documentary evidence as to facts in issue	150
55A Admissibility of evidence concerning credibility of person responsible for statement	153
55AB Certain depositions may be used at trial	154
55AC Evidence of a witness at a subsequent trial	156
55B Admissibility of statements produced by computers	157
55C Whether a statement is admissible	160
55D Where a statement is to be given in evidence	160
56 As to effect of Division on rules requiring corroboration	161
57 Proof of instrument to validity of which attestation is necessary	161
58 Presumptions as to documents twenty years old	161
<b>Division 3A—Books of account</b>	<b>162</b>
58A Definitions	162
58B Entries in book of account to be evidence	163
58C Where person in business party to proceedings, other party entitled to inspect etc. books of account	163
58D Proof that book is a book of account	163
58E Verification of copy	164
58F Matters which may be proved under this Division ordinarily to be so proved	164
58G Court may order that books of account or copies be made available	165
58H Costs of application	165
58I Application of sections 58B, 58D and 58E	166
58J Computation of time	166

<i>Section</i>	<i>Page</i>
<b>Division 4—Further provisions relating to Australasian documents</b>	<b>166</b>
59 Definitions	166
60 Votes and proceedings of Legislature of any Australasian State proved by copy	167
61 Royal proclamation in Australasian State proved by copy	168
62 Proof of Government Gazette	168
63 Mode of proving proclamations etc. of Governor or Ministers of the Crown of Australasian State	168
64 Government Gazette to be evidence of acts of Governor, Ministers etc.	169
65 Proof of certain public and corporation documents	170
66 Documents admissible in Australasian States without proof to be equally admissible in Victoria	171
67 Documents of Australasian State which if Victorian admissible on mere production provable by certified copy	172
68 Incorporation of any company how authenticated	172
69 Copies of documents relating to companies	173
<b>Division 5—Further provisions relating to Victorian documents</b>	<b>174</b>
70 Mode of proving proclamations, orders and regulations of Board of Land and Works	174
71 Government Gazette to be evidence of act of Board of Land and Works	175
72 Certified copies of certain maps and documents to be prima facie evidence	175
73 Proof of Crown grants	176
74 Proof of will and death	177
75 Signature of clerks of courts to be evidence	177
<b>Division 5A—Scientific tests</b>	<b>178</b>
75A Evidence of results of scientific tests	178
<b>Division 6—Judicial notice</b>	<b>179</b>
76 Acts of Parliament of the United Kingdom to be judicially noticed	179
77 Australasian States and their Acts to be judicially noticed	179
78 Public seals of States	180
79 Certain signatures and seals to be judicially noticed	180
80 All persons acting judicially to take judicial notice	181
81 Effect of judicial notice of seal or signature in certain cases	181



<i>Section</i>	<i>Page</i>
<b>Division 7—By-laws and minutes</b>	<b>182</b>
82 Definitions	182
83 Proof of by-laws	182
84 Form of certificate	182
85 Technical proof unnecessary	183
86 Proof of proceedings of councils, committees etc.	183
<b>Division 8—Convictions and acquittals</b>	<b>184</b>
87 Proof of trial or conviction or acquittal for an indictable offence by certified copy	184
88 Mode of proving previous convictions in other countries	185
89 Evidence of previous summary conviction	185
<b>Division 9—Document unavailability</b>	<b>186</b>
89A Meaning of unavailability of document	186
89B Court may make ruling or order	187
89C Matters the court must consider	188
89D Relationship of this Division with VCAT Act	188
89E Operation of <b>Public Records Act 1973</b>	188
<b>PART IIIA—ADMISSIBILITY OF FINDINGS OF GUILT IN CIVIL PROCEEDINGS</b>	<b>189</b>
90 Convictions etc. as evidence in civil proceedings	189
91 <i>Repealed</i>	189
92–98 <i>Repealed</i>	186
98A–98C <i>Repealed</i>	188
<b>PART IV—OATHS AFFIRMATIONS AFFIDAVITS DECLARATIONS</b>	<b>190</b>
<b>Division 1—Introductory</b>	<b>190</b>
99 Definition	190
<b>Division 2—Oaths and affirmations</b>	<b>190</b>
100 Manner of administration of oaths	190
101 Swearing with uplifted hand	192
102 When affirmation may be made instead of oath	192
103 Form of oral affirmation	193
104 Validity of oath not affected by absence of religious belief	193
<b>Division 3—Declarations in public departments</b>	<b>194</b>
105 Declarations may be substituted for oaths and affidavits	194
106 Such substitution to be notified in Gazette	194

<i>Section</i>	<i>Page</i>
<b>Division 4—Statutory declarations</b>	<b>195</b>
107 Statutory declarations	195
107A List of persons who may witness statutory declarations	195
108 Objection that matter is not one requiring verification not to be taken	199
109 Name and address of person witnessing declaration to appear on declaration	199
<b>Division 5—Courts and officers</b>	<b>199</b>
110 Courts etc. may administer oaths to witnesses	199
110A <i>Repealed</i>	199
111 Power of certain officers of courts etc. to administer oaths	200
111A Person appointed by foreign authority may take evidence and administer oaths	200
<b>Division 6—Gaolers</b>	<b>201</b>
112 Affidavits of prisoners	201
<b>Divisions 7, 8—<i>Repealed</i></b>	<b>201</b>
113–123B <i>Repealed</i>	201
<b>Division 9—Affidavits in Victoria</b>	<b>202</b>
123C Affidavits in Victoria how sworn and taken	202
<b>Division 10—Affidavits in places out of Victoria</b>	<b>206</b>
124 Taking oaths out of Victoria	206
125 Affidavits and declarations required to be made before a justice sufficient if made before a justice elsewhere	208
<b>Division 11—Jurat</b>	<b>209</b>
126 Jurat to state where and when oath is taken	209
126A Jurat etc. to affidavit to be prima facie evidence of execution	209
<b>PART V—ATTESTATIONS VERIFICATIONS ACKNOWLEDGMENTS NOTARIAL ACTS ETC.</b>	<b>210</b>
127 Provision of Part 4 extended to attestations, notarial acts etc.	210
128 Attestations etc. before a justice	211
129 <i>Repealed</i>	211

<i>Section</i>	<i>Page</i>
<b>PART VI—RECORDING OF EVIDENCE</b>	<b>212</b>
130 Power to person acting judicially to direct that evidence be recorded	212
131 As to methods of recording evidence	213
132–133 <i>Repealed</i>	213
134 Persons recording evidence under this Part to be officers of the court	213
135 Records made under this Part to be received as prima facie evidence of matter therein contained	214
136 <i>Repealed</i>	214
137 Penalty for falsely recording evidence	215
138, 139 <i>Repealed</i>	215
140 Power to Governor in Council to regulate fees	215
<b>PART VII—OFFENCES PERJURY FORGERY FALSE CERTIFICATES ETC.</b>	<b>217</b>
141 Persons making wilful false statements on oath, declaration etc. guilty of perjury	217
142 Forgery, using etc. false documents an indictable offence	217
143 Printing or using documents falsely purporting to be printed by government printer an indictable offence	218
144 Giving false certificates an indictable offence	219
145 Interpretation provisions to apply to this Part	219
<b>PART VIII—MISCELLANEOUS</b>	<b>220</b>
146 Impounding documents	220
147 Attesting witness	220
148 Comparison of handwriting	220
149 Confession after promise or threat or purporting to be on oath	221
149A Admissions of fact in criminal proceedings	221
149AB Agreed facts	221
149B Directions by judge where parties consent	222
149C Variation or revocation of direction under section 149B	223
150 Issue of warrant when witness does not appear	223
151 Abolition of extra-judicial oaths	224
151A Supreme Court—limitation of jurisdiction	224
152 Regulations	224
153 Transitional provisions ( <b>Crimes (Amendment) Act 1997</b> )	225
154 Transitional provisions (Division 2A of Part II)	226
155 Transitional provision— <b>Magistrates' Court (Committal Proceedings) Act 2000</b>	227
156 Transitional provision— <b>Evidence (Witness Identity Protection) Act 2004</b>	227
156A Transitional provision— <b>Sentencing (Further Amendment) Act 2005</b>	228

<i>Section</i>	<i>Page</i>
157 Transitional provision— <b>Children and Young Persons (Age Jurisdiction) Act 2004</b>	228
158 Transitional provision— <b>Evidence (Document Unavailability) Act 2006</b>	228
158A Transitional provision— <b>Crimes (Sexual Offences) Act 2006</b>	229
159 Transitional provision— <b>Crimes (Sexual Offences) (Further Amendment) Act 2006</b>	229
<hr/>	
<b>SCHEDULES</b>	<b>230</b>
SCHEDULE 1— <i>Repealed</i>	230
SCHEDULE 2—Form of Order of Prisoner to be Brought Before Court	231
SCHEDULE 3—Form of Certificate for Authentication of By-law	232
SCHEDULE 4— <i>Repealed</i>	232
<hr/> <hr/>	
<b>ENDNOTES</b>	<b>233</b>
1. General Information	233
2. Table of Amendments	234
3. Explanatory Details	248

---

**Version No. 153**  
**Evidence Act 1958**  
**No. 6246 of 1958**

Version incorporating amendments as at 1 July 2007

**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):

**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. 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).

\* \* \* \* \*

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

**3 Definitions**

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

*authorised deposit-taking institution* has the same meaning as in the Banking Act 1959 of the Commonwealth;

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

S. 3(1) def. of *authorised deposit-taking institution* inserted by No. 11/2001 s. 3(Sch. item 25.1).

s. 3

---

***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;

S. 3(1) def. of *child* inserted by No. 2/2006 s. 24(a).

***child*** means a person who is under the age of 18 years;

S. 3(1) def. of *cognitive impairment* inserted by No. 2/2006 s. 24(a).

***cognitive impairment*** includes impairment because of mental illness, intellectual disability, dementia or brain injury;

***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;

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

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

- (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;

*film* includes a microfilm and a microfiche;

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

\* \* \* \* \*

S. 3(1) def. of  
*impaired*  
inserted by  
No. 8/1991  
s. 7(a),  
repealed by  
No. 2/2006  
s. 24(b).

*lawyer* means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

S. 3(1) def. of  
*lawyer*  
inserted by  
No. 18/2005  
s. 18(Sch. 1  
item 40.1).

*legal practitioner* means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 3(1) def. of  
*legal practitioner*  
inserted by  
No. 18/2005  
s. 18(Sch. 1  
item 40.1).

*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

---

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 subsection (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**

**Division 1—Orders and commissions to examine witnesses**

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.

**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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (1), whether or not it is otherwise admissible.
- (7) In this section, a reference to evidence taken in an examination includes a reference to—
- (a) a document produced at the examination; and
-

s. 5

(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–9E) 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  
take, or to cause to be taken, the evidence of  
the person.

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

- 
- (2) In determining whether it is in the interests of justice to make an order under subsection (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 subsection (1) of the kind referred to in subsection (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 subsection (1) of the kind referred to in subsection (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 subsection (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 subsection (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 subsection (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. 9C

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 subsection for the purpose of a proceeding in the Supreme Court.
- (2) Subsections (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 subsections (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 subsections (5) and (7), a reference to an order made under subsection (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.



**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.

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

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

Pt 1 Div. 1B  
(Heading and  
ss 9F–9K)  
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  
inserted 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;

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

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

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

S. 9H  
inserted 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 subsection (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 subsection (1) of the kind referred to in subsection (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 subsection (1) of the kind referred to in subsection (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.

**s. 9H**

- 
- (5) Subject to subsection (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 subsection (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 subsection (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.

---

**9I Proceedings in inferior courts**

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

- (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 subsection for the purpose of a proceeding in the Supreme Court.
- (2) Subsections (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 subsections (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 subsections (5) and (7), a reference to an order made under subsection (1) were a reference to an order made by a court by virtue of this section.

**9J Exclusion of evidence in criminal proceedings**

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

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. 9K

S. 9K  
inserted 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.

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

## Division 1C—Taking of evidence for foreign and Australian courts<sup>1</sup>

S. 9L  
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—

- (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.

---

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

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

- (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 subsections (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) Subsection (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.

**90 Privilege of witnesses**

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

- (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) Subsection (1)(b) does not apply unless the claim of the person in question to be exempt from giving evidence is either—
- (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.

**s. 9P**

- (4) In this section, references to giving evidence include references to answering any question and to producing any document, and the reference in subsection (3) to the transmission of evidence given by a person shall be construed accordingly.

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

### **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.

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

### **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.

## **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.

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

No. 3674 s. 11.

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),  
45/2001  
s. 41(1),  
48/2006  
s. 42(Sch.  
item 13.1).

Any person in custody in any gaol police gaol prison penal establishment youth justice 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<sup>2</sup>, 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 is to be returned in due course to the place from which he or she was brought, unless released from custody according to law.

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**

### **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.

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

---

**Division 5—Boards appointed and commissions issued by  
the Governor in Council**

**14 Power to send for persons and papers**

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

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<sup>3</sup>**

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.

s. 16

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

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

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.

No. 3674 s. 17.

**17 Power to send for witnesses and documents**

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.

**18 Power of commissioner to examine upon oath etc.**<sup>4</sup>

No. 3674 s. 18.

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.

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

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

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 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.

**19A Application of Division**

S. 19A  
inserted by  
No. 80/1998  
s. 6.

- (1) This Division applies in relation to a commission as if a reference in this Division to a document included a reference to a thing.

- 
- (2) Nothing in any Act or law prevents the application of this Division for the purposes of a commission to and in relation to—
- (a) a person who is—
    - (i) a coroner within the meaning of the **Coroners Act 1985**;
    - (ii) the Victorian WorkCover Authority or a member of its Board of Management;
    - (iii) any other public statutory authority or a member of the board of management (by whatever named called) of such an authority;
    - (iv) the Director of Public Prosecutions;
    - (v) a member of the police force;
    - (vi) the holder of an office established by or under an Act;
  - (b) any information, document or thing obtained by or in the possession or control of any such person;
  - (c) the disclosure or production to the commission of any such information, document or thing.

S. 19B  
inserted by  
No. 80/1998  
s. 6.

**19B Public may be excluded in certain circumstances**

- (1) The commissioner presiding at a hearing of a commission may order the exclusion of the public or of persons specified by the commissioner from the hearing or a part of it if the commissioner is satisfied that the exclusion of the public, or of those persons, from the hearing or a part of it would facilitate the conduct of the inquiry by the commission or would otherwise be in the public interest.



- (2) The commissioner presiding at a hearing of a commission may make an order prohibiting the publication of a report of the whole or any part of the proceedings of a hearing or part of a hearing to which an order under subsection (1) applies or of any information derived from the hearing or part of it except by, or with the leave of, the commission.
- (3) If an order is made under subsection (2), the commissioner presiding at the hearing must cause a copy of the order to be posted on a door or other conspicuous place where the hearing is held.
- (4) A person must not contravene an order made and posted under subsections (2) and (3).

Penalty: 30 penalty units or imprisonment for 3 months.

#### **19C Incriminating answers**

- (1) Despite anything to the contrary in this Division, a person required to provide any information, or to produce any document or thing, to a commission, or appearing before a commission to give evidence, is not excused from providing the information, or producing the document or thing, or giving the evidence, on the ground that the information, or document or thing, or evidence, may tend to incriminate him or her.
- (2) Any information provided, or document or thing produced, or evidence given, by a person to a commission is not admissible against him or her in any proceedings, whether civil or criminal, nor can it be made the ground of any prosecution, action or suit against him or her other than in proceedings for perjury or giving false information.

S. 19C  
inserted by  
No. 80/1998  
s. 6.

**s. 19D**

**S. 19D**  
inserted by  
No. 80/1998  
s. 6.

**19D Legal professional privilege**

- (1) Despite anything to the contrary in this Division, if a person is required by a commission to answer a question or produce a document or thing, the person is not excused from complying with the requirement on the ground that the answer to the question would disclose, or the document contains, or the thing discloses, matter in respect of which the person could claim legal professional privilege.
- (2) The commissioner may require the person to comply with the requirement at a hearing of the commission from which the public, or specified persons, are excluded in accordance with section 19B.

**S. 19E**  
inserted by  
No. 80/1998  
s. 6.

**19E Powers of entry, inspection and possession**

- (1) If the commissioners of a commission reasonably consider it necessary for the purposes of the commission, a commissioner, with such assistance as he or she thinks fit—
  - (a) may enter and inspect any place and any document or thing in that place; and
  - (b) may make a copy of any document relevant, or that the commissioner reasonably considers may be relevant, to the commission; and
  - (c) may take possession of any document or thing which the commissioner considers relevant to the commission and may keep it until the commission has completed its inquiry and report.
- (2) If the commissioners of a commission reasonably consider it necessary for the purposes of the commission, a commissioner may, in writing, authorise a member of the police force to do any one or more of the following at or between

---

specified times during a specified period (not exceeding one month after the authority is given)—

- (a) to enter a specified place;
  - (b) to inspect a specified place and any document or thing in that place;
  - (c) to make a copy of specified documents or classes of documents;
  - (d) to take possession of specified things or classes of things.
- (3) A member of the police force must not exercise a power under an authority under subsection (2), unless the member has given a copy of the authority to the owner or occupier or the person in possession of the document or thing to be inspected, copied or taken.
- (4) A commissioner may release any document or thing kept under subsection (1)(c) or (2)(d) and may require a person to whom the document or thing is released to give an undertaking to comply with any reasonable conditions of release.
- (5) A person must comply with an undertaking concerning release.

Penalty: 10 penalty units.

**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).

**s. 20**

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

(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(3)**  
amended by  
Nos 7933  
s. 2(e), 9554  
s. 2(2)(Sch. 2  
item 66),  
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(4)**  
repealed by  
No. 110/1986  
s. 140(2).

\* \* \* \* \*

**S. 20(5)**  
inserted by  
No. 7933  
s. 2(f),  
amended by  
No. 9554  
s. 2(2)(Sch. 2  
item 67).

(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 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 subsection (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.

**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.

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

**21 Allowances to witnesses**

No. 3674 s. 21.

- (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).

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

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

- (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

**s. 21B**

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.

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

**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. 21C  
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
- (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 subsection (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.

---

**Division 6—Disclosure of information relating to applications for legal aid**

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

**21D Definitions<sup>5</sup>**

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

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

*applicant* means a person—

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

- (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—

S. 21D def. of  
*legal aid*  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 40.2(b)).

- (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;
- (b) the provision in respect of legal services provided or to be provided by a private law practice or private legal 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);

s. 21D

S. 21D def. of *legal aid body* amended by Nos 48/1995 s. 11(4)(a)(ii), 18/2005 s. 18(Sch. 1 item 40.2(c)).

*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 law practice or Victoria Legal Aid;

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);

S. 21D def. of *private law practice* inserted by No. 18/2005 s. 18(Sch. 1 item 40.2(a)).

*private law practice* has the same meaning as in the **Legal Aid Act 1978**;

S. 21D def. of *private legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 40.2(a)).

*private legal practitioner* has the same meaning as in the **Legal Aid Act 1978**;

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. 1 item 2.1), repealed by No. 18/2005 s. 18(Sch. 1 item 40.2(d)).

\* \* \* \* \*



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

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

**21E Disclosure of information etc. relating to proposed applications<sup>6</sup>**

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

- (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 law practice or private legal 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(1)(b) amended by No. 18/2005 s. 18(Sch. 1 item 40.3).

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

**s. 21F**

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

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

- (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 law practice or private legal 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.

**S. 21F(1)(b)**  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 40.3).

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

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

- (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.

---

**21H Application of this Division<sup>7</sup>**

(1) This Division applies whether or not—

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

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

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

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

(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**.

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

**Division 7—Family mediations**

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

**21I Definitions**

(1) In this Division—

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

*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).

**s. 21J**

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

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

**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.

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).

**Division 8—Dispute settlement centres<sup>8</sup>**

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

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

S. 21L  
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

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

s. 21N

(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.

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

(2) In subsection (1)—

*dispute settlement centre* includes neighbourhood mediation centre;

*mediator* includes neighbourhood mediator.

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

## 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.

---

**PART II—WITNESSES**

**Division 1—Who may testify**

**22 Witness not to be incapacitated by crime or interest** No. 3674 s. 22.

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.

**23 Evidence of children and persons with a cognitive impairment** S. 23 (Heading) inserted by No. 2/2006 s. 25(1).

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

(1) Subject to this section, a child or a person with a cognitive impairment is competent and compellable to give evidence. S. 23(1) substituted by Nos 8/1991 s. 8(a), 2/2006 s. 25(2).

(1A) A child or a person with a cognitive impairment is competent to give sworn evidence only if he or she is capable of understanding that, in giving S. 23(1A) inserted by No. 2/2006 s. 25(2).

---

evidence, he or she is under an obligation to give truthful evidence.

**S. 23(1B)**  
inserted by  
No. 2/2006  
s. 25(2).

(1B) Subject to subsection (1C), a child or a person with a cognitive impairment who is not competent to give sworn evidence is competent to give unsworn evidence only if he or she is capable of understanding, and of giving an answer that can be understood to, a question that is put to him or her.

**S. 23(1C)**  
inserted by  
No. 2/2006  
s. 25(2).

(1C) If a child or a person with a cognitive impairment is not capable of understanding, and of giving an answer that can be understood to, a question that is put to him or her, that child or person is not competent to give evidence about the fact to which that question relates, but may be competent to give evidence about another fact that relates to a question which the child or person is capable of understanding and of giving to it an answer that can be understood.

**S. 23(1D)**  
inserted by  
No. 2/2006  
s. 25(2).

(1D) If a child or a person with a cognitive impairment is competent to give evidence, the court must, before the evidence is given, explain to the child or person in the absence of the jury (if any)—

- (a) the importance of telling the truth and of not telling lies; and
- (b) that he or she may be asked questions that he or she does not know, or cannot remember, the answer to, and that he or she should let the court know if this occurs; and
- (c) that he or she may be asked questions that make suggestions that are true or untrue and that he or she should agree with the statements that are true and should not feel pressured to agree with statements that he or she believes are untrue.



- 
- (2) The competency of a child or a person with a cognitive impairment to give evidence must be determined in the absence of the jury. S. 23(2) substituted by No. 8/1991 s. 8(a), amended by No. 2/2006 s. 25(3).
- (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 children or persons with a cognitive impairment as an unreliable class of witness. S. 23(2A) inserted by No. 8/1991 s. 8(a), amended by No. 2/2006 s. 25(4).
- (2B) Nothing in subsection (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.

\* \* \* \* \*

S. 23A inserted by No. 8/1991 s. 9, repealed by No. 2/2006 s. 26.

s. 24

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.

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

## **25 Abolition of accused's right to make unsworn statement or to give unsworn evidence<sup>9</sup>**

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.

### **Division 2—Privileges disabilities and obligations of witnesses**

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

## **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 proceeding<sup>10</sup>.

**27 Communications to husband or wife privileged**

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

- (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 disclose any communication made to her by her husband during the marriage.
- (2) Nothing in subsection (1) shall apply to any criminal proceeding or to any proceeding for the grant, variation or revocation of bail.

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

**28 Confessions to clergymen and medical men**

Nos 3674  
s. 28, 5183  
s. 7.

- (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.
- (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(1)  
amended by  
No. 7418  
s. 2(a).

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

s. 29

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) Subsection (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.

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

(5) Subsections (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;

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

(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.

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

## 29 Where witness must answer questions which disgrace or criminate

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.

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

No. 5647 s. 2.

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).

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

**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.

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

**Division 2A—Confidential communications**

S. 32AB  
inserted by  
No. 2/2006  
s. 27.

**32AB Guiding principles**

It is the intention of Parliament that in interpreting and applying Divisions 3 and 3AA and this Division in any legal proceeding that relates (wholly or partly) to a charge for a sexual offence, courts are to have regard to the fact that—

- 
- (a) there is a high incidence of sexual violence within society; and
  - (b) sexual offences are significantly under-reported; and
  - (c) a significant number of sexual offences are committed against women, children and other vulnerable persons including persons with a cognitive impairment; and
  - (d) offenders are commonly known to their victims; and
  - (e) sexual offences often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred.

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

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

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

s. 32C

S. 32B(1)  
def. of  
*protected  
evidence*  
amended by  
No. 2/2006  
s. 28.

*protected evidence* means evidence that is protected from being produced or 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;

S. 32B(1)  
def. of  
*registered  
medical  
practitioner*  
amended by  
No. 97/2005  
s. 182(Sch. 4  
item 19.1).

*registered medical practitioner* means a medical practitioner registered under the **Health Professions Registration Act 2005**;

*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**

S. 32C(1)  
substituted by  
No. 2/2006  
s. 29(1).

- (1) In a legal proceeding—
- (a) a party cannot seek to compel another party to produce a document containing a confidential communication;



- 
- (b) a document is not to be produced if it would disclose a confidential communication;
  - (c) evidence is not to be adduced if it would disclose—
    - (i) a confidential communication; or
    - (ii) the contents of a document recording a confidential communication—

unless the court grants leave to compel the production of the document or to produce it or to adduce the evidence, and the party seeking to have the document produced or to produce it or to adduce the evidence has given notice of their intention in accordance with subsection (2).

- (2) A party seeking to compel the production of, or to produce or adduce, protected evidence must, not less than 14 days before the evidence is proposed to be compelled to be produced, produced or 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 subsection (2); or
  - (b) waive the requirement to give notice under subsection (2).
- (4) On receipt of a notice under subsection (2)(b), the informant must give a copy of the notice to the protected confider within a reasonable time after its receipt.

**S. 32C(2)  
amended by  
No. 2/2006  
s. 29(2)(a)(b).**

**s. 32D**

- (5) Whether or not notice has been given under subsection (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 subsection (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 subsection (1), is not to be compelled to be produced, produced or adduced in a legal proceeding is not admissible in the proceeding.

S. 32C(7)  
amended by  
No. 2/2006  
s. 29(3).

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

**32D Restriction on granting leave**

- (1) A court must not grant leave to compel the production of, to produce or 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 produced or adduced or to be produced or adduced by the party seeking leave, 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

S. 32D(1)  
amended by  
No. 2/2006  
s. 30(1)(a).

S. 32D(1)(a)  
substituted by  
No. 2/2006  
s. 30(1)(b).

---

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 subsection (1)(c), the court must take into account—
- (a) the likelihood, and the nature or extent, of harm that would be caused to the protected confider if the protected evidence is produced or adduced;
  - (b) the extent to which the protected evidence is necessary to allow the accused to make a full defence;
  - (c) the need to encourage victims of sexual offences to seek counselling and the extent to which victims may be discouraged to do so, or the extent to which the effectiveness of counselling may be diminished, if the protected evidence were produced or adduced;
  - (d) whether the party seeking to compel the production of or to produce or adduce the protected evidence is doing so on the basis of a discriminatory belief or bias;
  - (e) whether the protected confider objects to the disclosure of the protected evidence;
  - (f) the nature and extent of the reasonable expectation of confidentiality and the potential prejudice to the privacy of any person.
- (3) A court may grant leave to compel the production of, or to produce or adduce, part of—
- (a) a confidential communication; or

**S. 32D(2)**  
substituted by  
**No. 2/2006**  
**s. 30(2).**

**S. 32D(3)**  
amended by  
**No. 2/2006**  
**s. 30(3)(a)(b).**

s. 32E

(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 compel its production or to produce or 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.

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

### **32E Limitations on privilege**

S. 32E(1)  
amended by  
No. 2/2006  
s. 31(1).

- (1) This Division does not prevent the production or 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
- (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 subsection (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 production or adducing of evidence is not given under subsection (1)(a), that fact must not be referred to in the presence of the jury, if any.

S. 32E(3)  
amended by  
No. 2/2006  
s. 31(2).

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

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

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

s. 32G

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.

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

### 32G Operation of Division

- (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) Subsection (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

Note to  
Pt 2 Div. 3  
inserted by  
No. 2/2006  
s. 32.

#### Note

Section 32AB sets out guiding principles for interpreting and applying this Division.

No. 3674 s. 31.

### 33 Witness may be questioned as to previous conviction

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.

**35 Evidence of previous statement of witness**

No. 3674 s. 33.

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.

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

No. 3674 s. 34.

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.

No. 3674 s. 35.

### **37 Cross-examination as to credit**

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.



---

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

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

(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:

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) 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—

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

S. 37A(1)  
Rule (2)(a)  
amended by  
Nos 8/1991  
s. 10(1)(b),  
81/1991  
s. 4(a), 2/2006  
s. 33(1).

(b) no evidence shall be admitted as to the sexual activities (whether consensual or non-consensual) of the complainant.

S. 37A(1)  
Rule (2)(b)  
amended by  
Nos 81/1991  
s. 4(b), 2/2006  
s. 33(1).

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

(a) it is satisfied that the evidence has substantial relevance to a fact in issue and that it is in the interests of justice to allow the cross-examination or to admit the evidence, having regard to—

S. 37A(1)  
Rule (3)(a)  
substituted by  
No. 2/2006  
s. 33(2).

**s. 37A**

**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).**

- 
- (i) whether the probative value of the evidence outweighs the distress, humiliation and embarrassment that the complainant may experience as a result of the cross-examination or the admission of the evidence, in view of his or her age and the number and nature of the questions that he or she is likely to be asked; and
  - (ii) the risk that the evidence may arouse discriminatory belief or bias, prejudice, sympathy or hostility in the jury; and
  - (iii) the need to respect the complainant's personal dignity and privacy; and
  - (iv) the right of the accused person to fully answer and defend the charge; 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, or had freely agreed to engage in sexual activity with the accused person or another person other than the sexual activity to which the charge relates, 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.
- (4A) Without limiting Rule (4), evidence of a kind referred to in that Rule is not admissible to support an inference that the complainant is the type of person who is more likely to have consented to the sexual activity to which the charge relates.
- (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 and, in the case of a committal proceeding, to the informant—
- S. 37A(1)  
Rule (4)  
amended by  
Nos 81/1991  
s. 4(c), 2/2006  
s. 33(3).**
- S. 37A(1)  
Rule (4A)  
inserted by  
No. 2/2006  
s. 33(4).**
- S. 37A(1)  
Rule (5)(aa)  
inserted by  
No. 81/1997  
s. 9(1).**
- S. 37A(1)  
Rule (5)(aa)(i)  
amended by  
No. 92/2000  
s. 13(a).**

**s. 37A**

**S. 37A(1)**  
**Rule (5)(aa)**  
**(i)(A)**  
**amended by**  
**No. 92/2000**  
**s. 13(b).**

- (A) in the case of a committal proceeding, at least 14 days before the date fixed by the court for the cross-examination of the witness; 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), (4) and (4A) are satisfied but in that case may be granted provided that the court considers it desirable in the interests of justice so to do. **S. 37A(1) Rule (5)(c) amended by No. 2/2006 s. 33(5).**
- (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— **S. 37A(1) Rule (5A) inserted by No. 81/1997 s. 9(3).**
- (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). **S. 37A(1) Rule (5B) inserted by No. 81/1997 s. 9(3).**
- (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. **S. 37A(1) Rule (5C) inserted by No. 81/1997 s. 9(3).**

s. 37B

---

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

- (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(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).

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

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

**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

(ab) an offence under Subdivision (8EAA) of Division 1 of Part I of the **Crimes Act 1958**; or

(b) an indictable offence which involves an assault on, or injury or a threat of injury to, a person.

S. 37B(1)(ab)  
inserted by  
No. 20/2004  
s. 8(1).

S. 37B(2)  
amended by  
No. 2/2006  
s. 33(6).

- (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 a cognitive impairment or is under the age of 18.

- (3) Subject to subsection (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
  - (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**

- (1) This section does not apply to a witness who is a complainant in relation to a charge for a sexual offence.

**Notes**

- 1 Section 37CAA provides for alternative arrangements for the giving of evidence by a complainant (other than a complainant who is a child or a person with a cognitive impairment) in legal proceedings that relate to a charge for a sexual offence.

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 new s. 37C(1) inserted by No. 2/2006 s. 34(1), substituted by No. 76/2006 s. 5.

s. 37C

2 Section 41E provides for alternative arrangements for the giving of evidence by a complainant who is a child or a person with a cognitive impairment in legal proceedings that relate to a charge for a sexual offence.

S. 37C(2) substituted 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—

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

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

S. 37C(2)(a)(iii) inserted by No. 20/2004 s. 8(2), amended by No. 2/2006 s. 34(2).

(iii) an offence under Subdivision (8EAA) of Division 1 of Part I of the **Crimes Act 1958**.

S. 37C(2)(b) amended by No. 33/1994 s. 17(2)(b), substituted by No. 81/1997 s. 10, repealed by No. 2/2006 s. 34(3).

\* \* \* \* \*

(3) Without limiting subsection (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;
  - (d) requiring legal practitioners not to robe; S. 37C(3)(d) 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; S. 37C(3)(e) amended by No. 35/1996 s. 453(Sch. 1 item 29.2).
  - (f) permitting only persons specified by the court to be present while the witness is giving evidence.
- (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.
-

**s. 37CAA**

S. 37CAA  
inserted by  
No. 76/2006  
s. 6.

**37CAA Alternative arrangements for giving evidence by certain complainants in certain proceedings**

- (1) Subject to this section, in a legal proceeding that relates (wholly or partly) to a charge for a sexual offence, the court must direct that any of the following arrangements be made for the giving of evidence by a complainant (other than a complainant who is a child or a person with a cognitive impairment)—
  - (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 chosen by the witness and approved by the court for this purpose, to be beside the witness while he or she is giving evidence for the purpose of providing emotional support to him or her.
- (2) The court must direct that the arrangement referred to in subsection (1)(a) be made unless—
  - (a) the court is satisfied that the complainant—
    - (i) is aware of his or her right to give evidence in accordance with the arrangement referred to in subsection (1)(a); and
    - (ii) is able and wishes to give evidence in the courtroom; and
  - (b) the court, on the application of the prosecution, determines not to direct that the arrangement referred to in subsection (1)(a) be made.

- 
- (3) The court must direct that any evidence given by a complainant in accordance with the arrangement referred to in subsection (1)(a) is recorded.
  - (4) If a court directs that the arrangement referred to in subsection (1)(a) be made, the court may make any order it considers appropriate to enable the complainant to view any place or thing or identify any person or thing.
  - (5) If the complainant is giving evidence in the courtroom, the court must direct that the arrangement referred to in subsection (1)(b) be made unless it is satisfied that the complainant—
    - (a) is aware of his or her right to give evidence in accordance with the arrangement referred to in subsection (1)(b); and
    - (b) does not wish a screen to be used to remove the defendant from his or her direct line of vision.
  - (6) The court must direct that the arrangement referred to in subsection (1)(c) be made unless the court is satisfied that the complainant—
    - (a) is aware of his or her right to give evidence in accordance with the arrangement referred to in subsection (1)(c); and
    - (b) does not want a person to be beside him or her while he or she is giving evidence for the purpose of providing emotional support to him or her.
  - (7) 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.
-

s. 37CA

- (8) 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.
- (9) 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.

S. 37CA  
inserted by  
No. 2/2006  
s. 35.

**37CA Special rules for cross-examination of protected witnesses**

- (1) This section applies to a legal proceeding that relates (wholly or partly) to a charge for a sexual offence.
- (2) In this section—  
*family member*, in relation to the complainant or accused person, includes—
  - (a) a person who is or has been married to the complainant or accused person; and
  - (b) a person who has or has had an intimate personal relationship with the complainant or accused person; and
  - (c) a person who is or has been the father, mother, step-father or step-mother of the complainant or accused person; and
  - (d) a child who normally or regularly resides with the complainant or accused person; and
  - (e) a guardian of the complainant or accused person; and
  - (f) another person who is or has been ordinarily a member of the household of the complainant or accused person;

---

*protected witness* means—

- (a) the complainant; or
  - (b) a family member of the complainant; or
  - (c) a family member of the accused person;  
or
  - (d) any other witness whom the court  
declares under subsection (3) to be a  
protected witness.
- (3) The court may at any time declare a witness to be  
a protected witness.
  - (4) A protected witness must not be personally cross-  
examined by the accused person.
  - (5) If the accused person is not legally represented,  
the court must—
    - (a) inform the accused person and the jury that  
the accused person is not permitted  
personally to cross-examine a protected  
witness; and
    - (b) ask the accused person whether he or she has  
sought to obtain legal representation for the  
cross-examination of a protected witness;  
and
    - (c) if satisfied that the accused person has not  
had a reasonable opportunity to obtain legal  
representation, grant an adjournment if so  
requested by the accused person.
  - (6) If the accused person does not obtain legal  
representation for the cross-examination of a  
protected witness (after being given a reasonable  
opportunity to do so), the court must order  
Victoria Legal Aid to provide legal representation  
for the accused person for that purpose.

- 
- (7) Despite anything in the **Legal Aid Act 1978**, Victoria Legal Aid must provide legal representation in accordance with an order under subsection (6).
- (8) A legal practitioner provided by Victoria Legal Aid must act in the best interests of the accused person if the accused person does not give any instructions to that legal practitioner.
- (9) If the accused person refuses the legal representation provided to him or her in accordance with subsection (7), or otherwise refuses to co-operate, the court must warn the accused person that he or she will not be permitted to adduce evidence from a witness in relation to a fact in issue with the intention of contradicting the evidence of a protected witness in relation to that fact, if the fact upon which he or she intends to rely to contradict the evidence of the protected witness has not been put to that protected witness during cross-examination.
- (10) If the accused person is only legally represented for the cross-examination of a protected witness the court must warn the jury—
- (a) that it is routine practice for an unrepresented accused person to obtain or be provided with legal representation for the cross-examination of a protected witness; and
  - (b) that no adverse inference may be drawn against the accused person as a result of the cross-examination not being conducted by the accused personally; and
  - (c) that the evidence given under cross-examination is not to be given any greater or lesser weight as a result of the cross-examination not being conducted by the accused personally.
-

---

**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 subsection (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

**s. 37D**

---

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 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, 37C or 41E to a charge for an offence against section 49A(1) of the **Crimes Act 1958**.

S. 37D(8)  
amended by  
No. 2/2006  
s. 36.

**37E Evidence of specialised knowledge in certain cases**

S. 37E  
inserted by  
No. 2/2006  
s. 37.

Despite any rule of law to the contrary, in any legal proceeding that relates (wholly or partly) to a charge for a sexual offence, the court may receive evidence of a person's opinion that is based on that person's specialised knowledge (acquired through training, study or experience) of—

- (a) the nature of sexual offences; and
- (b) the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that he or she has been the victim, of a sexual offence, including the reasons that may contribute to a delay on the part of the victim to report the offence.

**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.

s. 40

No. 3674 s. 38.

#### **40 Questions intended to insult or annoy**

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

Pt 2 Div. 3AA  
(Heading and  
ss 41A–41H)  
inserted by  
No. 2/2006  
s. 38.

### **Division 3AA—Examination and cross-examination of certain witnesses**

S. 41A  
inserted by  
No. 2/2006  
s. 38.

#### **41A Definition**

In this Division—

*child complainant* means a complainant, in relation to a charge for a sexual offence, who is a child.

S. 41B  
inserted by  
No. 2/2006  
s. 38.

#### **41B Application of Division**

If a provision of this Division is inconsistent with a provision of Division 3, the provision of this Division prevails to the extent of the inconsistency.

#### **Note**

Section 32AB sets out guiding principles for interpreting and applying this Division.

---

**41C Evidence of specialised knowledge to determine competency**

S. 41C  
inserted by  
No. 2/2006  
s. 38.

If, in a legal proceeding that relates (wholly or partly) to a charge for a sexual offence, a child or a person with a cognitive impairment is called as a witness, the court may receive evidence of a person's opinion that is based on that person's specialised knowledge (acquired through training, study or experience) for the purpose of determining whether or not the child or person is competent to give sworn or unsworn evidence.

**Note**

Section 23 provides for the giving of evidence by children and persons with a cognitive impairment.

**41D Evidence of previous representations made by child complainants**

S. 41D  
inserted by  
No. 2/2006  
s. 38.

- (1) If, in a legal proceeding that relates (wholly or partly) to a charge for a sexual offence, a child complainant who is under 17 years of age and who has made a previous representation is available to give evidence—
- (a) about the existence of a fact of which he or she had personal knowledge and that he or she intended to assert by the representation;  
or
  - (b) if the child complainant's credibility is relevant, to support his or her credibility—  
the hearsay rule, subject to subsection (2), does not apply to evidence of the representation that is given by—
  - (c) the child complainant; or
  - (d) a person who saw, heard or otherwise perceived the representation being made.

s. 41E

- (2) Subsection (1) does not apply unless the court is satisfied that the evidence is relevant to a fact in issue and is sufficiently probative, having regard to the nature and content of the representation and the circumstances in which it was made.
- (3) A witness has personal knowledge of the asserted fact if his or her knowledge of that fact was, or might reasonably be supposed to have been, based on something that the person saw, heard or otherwise perceived, other than a previous representation made by another person about the fact.
- (4) Evidence of the kind referred to in subsection (1) is admissible for either or both of the following purposes—
  - (a) to prove the truth of the fact contained in the representation; or
  - (b) to support the credibility of the child complainant as a witness.
- (5) If the court receives evidence of the kind referred to in subsection (1), the court must warn the jury that evidence of that kind may not be as reliable as original evidence.
- (6) Nothing in this section takes away from, or limits, any discretion a court has to exclude evidence.

S. 41E  
(Heading)  
substituted by  
No. 76/2006  
s. 7(1).

S. 41E  
inserted by  
No. 2/2006  
s. 38.

S. 41E(1)  
amended by  
No. 76/2006  
s. 7(2)(a).

**41E Alternative arrangements for giving evidence in certain proceedings by child complainants or complainants with a cognitive impairment**

- (1) Subject to subsection (2), in a legal proceeding that relates (wholly or partly) to a charge for a sexual offence, the court must direct that any of the following arrangements be made for the giving

---

of evidence by a child complainant or a complainant with a cognitive impairment—

- (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 chosen by the witness and approved by the court for this purpose, to be beside the witness while he or she is giving evidence for the purpose of providing emotional support to him or her.
- (2) The court must direct that the arrangement referred to in subsection (1)(a) be made unless—
- (a) the court is satisfied that the complainant—
    - (i) is aware of his or her right to give evidence in accordance with the arrangement referred to in subsection (1)(a); and
    - (ii) is able and wishes to give evidence in the courtroom; and
  - (b) the court, on the application of the prosecution, determines not to direct that the arrangement referred to in subsection (1)(a) be made.
- (3) The court must direct that any evidence given by a complainant in accordance with the arrangement referred to in subsection (1)(a) is recorded.
- (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

**S. 41E(2)**  
amended by  
**No. 76/2006**  
**s. 7(2)(b).**

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.

S. 41F  
inserted by  
No. 2/2006  
s. 38.

#### **41F Improper questions**

- (1) If, during cross-examination, a witness who is under the age of 18 years or who has a cognitive impairment is asked a question that, in the opinion of the court, is—
  - (a) confusing or misleading; or
  - (b) phrased in inappropriate language; or
  - (c) annoying, harassing, intimidating, offensive, oppressive or unduly repetitive—

whether because of its content, or the manner in which it is structured or sequenced or the tone in which it is put, having regard to the matters set out in subsection (2), the court must disallow the question or warn the witness that he or she is not obliged to answer the question.

- (2) Without limiting the matters that the court may have regard to for the purposes of subsection (1), the court must consider—
  - (a) any relevant condition or characteristic of the witness, including his or her age, cultural background, personality, education and level of understanding; and

- 
- (b) any cognitive impairment that the witness is, or appears to be, subject to.
  - (3) Nothing in this section takes away from, or limits, section 39 or 40.

**41G Pre-recording evidence at special hearing**

S. 41G  
inserted by  
No. 2/2006  
s. 38.

- (1) This section applies to a legal proceeding, other than a committal proceeding, that relates (wholly or partly) to a charge for a sexual offence.
- (2) Subject to subsection (3), the whole of the evidence of a child complainant or of a complainant with a cognitive impairment (including cross-examination and re-examination) must be—
  - (a) taken at a special hearing under this section and video recorded; and
  - (b) presented to the court in the form of that recording.
- (3) The court may, on the application of the prosecution, direct that subsection (2) is not to apply and that the complainant is to give direct testimony in the proceeding if the court is satisfied that the complainant—
  - (a) is aware of his or her right to have his or her evidence taken at a special hearing under this section and video recorded; and
  - (b) is able and wishes to give direct testimony in the proceeding.
- (4) If a special hearing is to be held, it must be held—
  - (a) within 21 days after the day on which the defendant is committed for trial; and
  - (b) before the court at which presentment is made.

**s. 41G**

- 
- (5) The court may fix a longer time for the holding of a special hearing if the court is satisfied that it is in the interests of justice to do so because of the existence of exceptional circumstances.
- (6) At a special hearing—
- (a) the defendant and his or her legal practitioner are to be present in the courtroom;
  - (b) the defendant—
    - (i) is not to be in the same room as the complainant when the complainant's evidence is being taken; but
    - (ii) is entitled to see and hear the complainant while the complainant is giving evidence and to have at all times the means of communicating with his or her legal practitioner;
  - (c) no person, other than a person authorised by the court, is to be present in the same room as the complainant when the complainant's evidence is being taken;
  - (d) the evidence of the complainant is to be given by means of closed-circuit television that enables communication between the room in which the complainant is present and the courtroom;
  - (e) except as provided by this section, the usual rules of evidence apply.
- (7) The room in which the complainant's evidence is taken is to be taken to be part of the courtroom while the complainant is there for the purpose of giving evidence.



---

**41H Use of pre-recorded evidence**

S. 41H  
inserted by  
No. 2/2006  
s. 38.

- (1) Subject to subsection (2), a recording referred to in section 41G is admissible in evidence as if its contents were the direct testimony of the witness—
  - (a) in the proceeding; and
  - (b) unless the relevant court otherwise orders, in—
    - (i) any rehearing or re-trial of, or appeal from, the proceeding; or
    - (ii) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances; or
    - (iii) a civil proceeding arising from the same facts as those on which the charge for the relevant offence is founded.
- (2) The court may rule as inadmissible the whole or any part of the contents of a recording and, if so, the court may direct that the recording be edited or altered to delete any part of it that is inadmissible.
- (3) Subject to subsection (2), the whole of a recording referred to in section 41G must be heard by the court and the jury.
- (4) The admissibility of the recording of the evidence of a child is not affected only because the child attains the age of 18 years before the evidence is presented in a proceeding.
- (5) The judge must warn the jury not to draw any inference adverse to the defendant or give the evidence of the witness any greater or lesser weight because it is recorded.

**s. 41H**

- 
- (6) Subject to subsection (9), if under this section the recorded evidence of a witness is admitted into evidence in a proceeding, the witness is not required to attend the proceeding unless required to do so for cross-examination or re-examination.
- (7) A witness whose evidence is recorded under section 41G cannot be cross-examined or re-examined without leave.
- (8) A court must not grant leave to cross-examine a witness referred to in subsection (7) unless satisfied that—
- (a) the defendant is seeking leave because of becoming aware of a matter of which he or she could not reasonably have been aware at the time of the recording; or
  - (b) if the witness were giving direct testimony in the proceeding, he or she could, in the interests of justice, be recalled to give further evidence; or
  - (c) it is otherwise in the interests of justice to permit the witness to be cross-examined or re-examined.
- (9) If leave is granted under subsection (8), the witness must attend the proceeding to be cross-examined or re-examined.

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

\* \* \* \* \*

---

**Division 3A—Witness orders**

**42 Victim who is a witness entitled to be present in court unless the court otherwise orders**

- (1) A court in a criminal proceeding may only order a victim of the offence who is a witness in the proceeding to leave the courtroom until required to give evidence if the court considers it appropriate to do so, whether to ensure a fair trial or for any other reason.
- (2) Nothing in this section prevents a court from ordering a victim who is a witness in the proceeding to leave the courtroom at any time after giving evidence if the court considers it appropriate to do so.

Pt 2 Div. 3A  
(Heading and  
new s. 42)  
inserted by  
No. 15/2005  
s. 9.

New s. 42  
inserted by  
No. 15/2005  
s. 9.

**Division 4—Manner of giving evidence**

**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.

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

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

s. 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.
-

---

**PART IIAA—WITNESS IDENTITY PROTECTION**

**Division 1—Introductory**

Pt 2AA  
(Headings  
and ss 42BA–  
42BS)  
inserted by  
No. 60/2004  
s. 3 (as  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 41(a)(b))).

**42BA Definitions**

(1) In this Part—

*assumed name*—

- (a) of a local operative, has the meaning given in section 42BD(1)(a)(i);
- (b) of an interstate operative, means the name (if any) stated in the operative's interstate witness identity protection certificate as his or her assumed name;

*Australian Crime Commission* means Australian Crime Commission established by the Australian Crime Commission Act 2002 of the Commonwealth;

*chief officer* means—

- (a) in relation to Victoria Police—the Chief Commissioner of Police;
- (b) in relation to the Australian Crime Commission—the Chief Executive Officer of the Australian Crime Commission;

*conduct* includes any act or omission;

*corresponding law* means a law of another jurisdiction that is declared by the regulations to correspond to this Part;

S. 42BA  
inserted by  
No. 60/2004  
s. 3 (as  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 41(a))).

*court* includes any tribunal or person authorised by law or consent of parties to receive evidence;

*court name* for a local operative in relation to an interstate proceeding or for an interstate operative in relation to a proceeding in this jurisdiction, means a name (other than the operative's real name) or code used to identify the operative in the proceeding;

*criminal activity* means conduct that involves the commission of an offence by one or more persons;

*false representation* does not include a representation made under an authority under—

- (a) the **Crimes (Assumed Identities) Act 2004**; or
- (b) the **Crimes (Controlled Operations) Act 2004**;

*interstate court* means a court of another jurisdiction;

*interstate operative* means a person in respect of whom an interstate witness identity protection certificate is in force;

*interstate proceeding* means a proceeding in another jurisdiction;

*interstate witness identity protection certificate* means a certificate given under a provision of a corresponding law that corresponds to section 42BB;

*investigation* means an investigation in relation to criminal activity, including an investigation extending beyond this jurisdiction;

---

*jurisdiction* means the Commonwealth or a State or Territory of the Commonwealth;

*law enforcement agency* means the following agencies—

- (a) Victoria Police;
- (b) the Australian Crime Commission;

*law enforcement officer* means—

- (a) in relation to Victoria Police—a member of Victoria Police;
- (b) in relation to the Australian Crime Commission—a member of staff of the Australian Crime Commission—

and includes a person who is seconded to a law enforcement agency, including (but not limited to) a member of the police force or police service or a police officer (however described) of another jurisdiction;

*local operative* means a person who is or was—

- (a) authorised to acquire and use an assumed identity under the **Crimes (Assumed Identities) Act 2004**; or
- (b) a participant in an authorised operation under the **Crimes (Controlled Operations) Act 2004**;

*member* of Victoria Police, means a member of the force within the meaning of the **Police Regulation Act 1958**;

*party* to a proceeding, means—

- (a) for a criminal proceeding—the prosecutor and each accused person; or
- (b) for a civil proceeding—each person who is a party to the proceeding; or

- (c) for any other proceeding—each person who may appear or give evidence in the proceeding;

*presiding officer* in relation to a proceeding, means the person constituting the court, or presiding over the court, in the proceeding;

*proceeding* means any criminal, civil or other proceeding or inquiry, reference or examination in which by law or consent of parties evidence is or may be given, and includes an arbitration;

*professional misconduct* means misconduct or a breach of discipline under—

- (a) the **Police Regulation Act 1958**; or
- (b) a law of another jurisdiction that corresponds to the **Police Regulation Act 1958**; or
- (c) a law of the Commonwealth that governs the conduct of members of staff of the Australian Crime Commission; or
- (d) a law of a foreign country that corresponds to the **Police Regulation Act 1958**;

*this jurisdiction* means Victoria;

*Victoria Police* means the force within the meaning of the **Police Regulation Act 1958**;

*witness identity protection certificate* means a certificate given under section 42BB.



- 
- (2) For the purposes of this Part—
- (a) a charge against a person for an offence is ***outstanding*** until the charge is finally dealt with in any of the following ways—
    - (i) the charge is withdrawn;
    - (ii) the charge is dismissed by a court;
    - (iii) the person is discharged by a court following a committal hearing;
    - (iv) the person is acquitted or found guilty of the offence by a court;
    - (v) a nolle prosequi is entered in respect of the offence;
  - (b) a charge against a person for an offence is ***pending*** if the person has not yet been charged with the offence, but—
    - (i) the person has been arrested for the offence, unless the person has been later released without being charged with an offence; or
    - (ii) a summons to appear before a court to answer a charge for the offence has been served on the person;
  - (c) an allegation of professional misconduct against a person is ***outstanding*** if the allegation has not been finally dealt with in accordance with the law of the jurisdiction or foreign country that governs the procedure for dealing with the allegation.
- (3) For the purposes of this Part—
- (a) anything permitted to be done by a party to a proceeding may be done by the party's legal practitioner;
-

- (b) any requirement to give something to a party to a proceeding is satisfied by giving the thing to the party's legal practitioner.

**Division 2—Witness identity protection certificates for local operatives**

S. 42BB  
inserted by  
No. 60/2004  
s. 3.

**42BB Giving witness identity protection certificate**

- (1) The chief officer of a law enforcement agency may give a certificate for a local operative of the agency in relation to an interstate proceeding if—
- (a) the local operative is, or may be required, to give evidence in the interstate proceeding; and
  - (b) the chief officer is satisfied on reasonable grounds that the disclosure in the interstate proceeding of the local operative's identity or where the local operative lives is likely to—
    - (i) endanger the safety of the local operative or someone else; or
    - (ii) prejudice any investigation.
- (2) The chief officer must make all reasonable enquiries to enable him or her to ascertain the information required to be included in the certificate by section 42BD.
- (3) The chief officer cannot give a certificate for a local operative until the chief officer has obtained a statutory declaration from the local operative under section 42BC.

**Note**

The chief officer may delegate functions under this section—see section 42BJ.

---

**42BC Statutory declaration by local operative**

S. 42BC  
inserted by  
No. 60/2004  
s. 3.

- (1) Before a witness identity protection certificate is given for a local operative, the local operative must make a statutory declaration of the following matters—
- (a) whether the local operative has been convicted or found guilty of an offence (in Victoria or elsewhere) and, if so, particulars of each offence; and
  - (b) whether any charges against the local operative for an offence are pending or outstanding (in Victoria or elsewhere) and, if so, particulars of each charge; and
  - (c) if the local operative is or was a law enforcement officer—
    - (i) whether the local operative has been found guilty of professional misconduct and, if so, particulars of each finding; and
    - (ii) whether, to the local operative's knowledge, any allegations of professional misconduct against him or her are outstanding and, if so, particulars of each allegation; and
  - (d) whether, to the local operative's knowledge, a court (in Victoria or elsewhere) has made any adverse comment about his or her credibility and, if so, particulars of the comment; and
  - (e) whether the local operative has made a false representation when the truth was required and, if so, particulars of the representation; and

s. 42BD

- (f) particulars of anything else known to the local operative that may be relevant to his or her credibility.
- (2) Subject to subsection (3), a person cannot be compelled to disclose or produce a statutory declaration made under this section in any proceeding.
- (3) Subsection (2) does not apply to—
  - (a) proceedings for perjury or otherwise in respect of the falsity of the statutory declaration; or
  - (b) proceedings of a disciplinary nature against a law enforcement officer; or
  - (c) investigations or inquiries by a person or body in any jurisdiction having jurisdiction to investigate or inquire into the conduct of a law enforcement officer.

S. 42BD  
inserted by  
No. 60/2004  
s. 3 (as  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 41(a))).

#### **42BD Form of witness identity protection certificate**

- (1) A witness identity protection certificate for a local operative of a law enforcement agency in relation to an interstate proceeding must state the following—
  - (a) if the local operative—
    - (i) is known to a party to the interstate proceeding or a party's lawyer by a name other than the operative's real name—that name (the *assumed name*); or
    - (ii) is not known to any party to the interstate proceeding or any party's legal practitioner by a name—the operative's court name for the interstate proceeding; and

- 
- (b) the period the local operative was involved in the investigation to which the interstate proceeding relates; and
  - (c) the name of the agency; and
  - (d) the date of the certificate; and
  - (e) the grounds for giving the certificate; and
  - (f) whether the local operative has been convicted or found guilty of an offence (in Victoria or elsewhere) and, if so, particulars of each offence; and
  - (g) whether any charges against the local operative for an offence are pending or outstanding (in Victoria or elsewhere) and, if so, particulars of each charge; and
  - (h) if the local operative is or was a law enforcement officer—
    - (i) whether the local operative has been found guilty of professional misconduct and, if so, particulars of each finding; and
    - (ii) whether any allegations of professional misconduct against the local operative are outstanding and, if so, particulars of each allegation; and
  - (i) whether, to the knowledge of the person giving the certificate, a court (in Victoria or elsewhere) has made any adverse comment about the local operative's credibility and, if so, particulars of the comment; and
  - (j) whether, to the knowledge of the person giving the certificate, the local operative has made a false representation when the truth was required and, if so, particulars of the representation; and
-

s. 42BE

(k) if there is anything else known to the person giving the certificate that may be relevant to the local operative's credibility—particulars of the thing.

(2) A witness identity protection certificate for a local operative must not contain information that may allow the operative's identity, or where the operative lives, to be revealed.

S. 42BE  
inserted by  
No. 60/2004  
s. 3.

**42BE Protection of decision to give certificate**

(1) A decision to give a witness identity protection certificate—

(a) is final; and

(b) cannot be appealed against, reviewed, called into question, quashed or invalidated in any court.

(2) Subsection (1) does not prevent a decision to give a witness identity protection certificate being called into question in the course of any proceedings of a disciplinary nature against the person who made the decision.

S. 42BF  
inserted by  
No. 60/2004  
s. 3.

**42BF Cancellation of witness identity protection certificate**

(1) This section applies if the chief officer of a law enforcement agency gives a witness identity protection certificate for a local operative of the agency in relation to an interstate proceeding.

(2) The chief officer must cancel the witness identity protection certificate if the chief officer considers that it is no longer necessary or appropriate to prevent the disclosure of the local operative's identity or where the local operative lives.

- 
- (3) If the chief officer cancels the certificate after it has been filed in an interstate court, the chief officer must immediately give notice to the interstate court and each party to the interstate proceeding, in writing, that the certificate has been cancelled.

**Note**

The chief officer may delegate functions under this section—see section 42BJ.

**42BG Permission to give information disclosing operative's identity etc.**

**S. 42BG  
inserted by  
No. 60/2004  
s. 3.**

- (1) This section applies if the chief officer of a law enforcement agency gives a witness identity protection certificate for a local operative of the agency in relation to an interstate proceeding.
- (2) The chief officer may, in writing, permit a person to give information (otherwise than in the proceeding) that discloses, or may lead to the disclosure of, the local operative's identity or where the local operative lives if the chief officer considers it necessary or appropriate for the information to be given.
- (3) The permission—
- (a) must name the person who may give the information; and
  - (b) must name the person to whom the information may be given; and
  - (c) must state the information that may be given; and
  - (d) may state how the information may be given.

**Note**

The chief officer may delegate functions under this section—see section 42BJ.

S. 42BH  
inserted by  
No. 60/2004  
s. 3.

#### 42BH Disclosure offences

- (1) A person commits an offence if—
- (a) a witness identity protection certificate for a local operative has been given; and
  - (b) the person knows that, or is reckless as to whether, the certificate has been given; and
  - (c) the person intentionally, knowingly or recklessly does something (the *disclosure action*) that discloses, or is likely to lead to the disclosure of, the local operative's identity or where the local operative lives; and
  - (d) the person knows that, or is reckless as to whether, the certificate had not been cancelled under section 42BF before the person does the disclosure action; and
  - (e) the person knows that, or is reckless as to whether, the disclosure action is not—
    - (i) authorised under a corresponding law; or
    - (ii) permitted under section 42BG.

Penalty: Imprisonment for 2 years.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation; or



(b) knows that, or is reckless as to whether, the disclosure action—

- (i) endangers or will endanger the health or safety of any person; or
- (ii) prejudices or will prejudice the effective conduct of an investigation.

Penalty: Imprisonment for 10 years.

- (3) An offence against subsection (2) is an indictable offence.
- (4) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.

**42BI Reports about witness identity protection certificates**

S. 42BI  
inserted by  
No. 60/2004  
s. 3.

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit to the Minister a report about witness identity protection certificates given by the chief officer during that year.
- (2) The report must include the following—
  - (a) the number of witness identity protection certificates given; and
  - (b) on what basis the chief officer was satisfied about the matters mentioned in section 42BB(1)(b) for each certificate; and
  - (c) if leave was given or an order made under a provision of a corresponding law that corresponds to section 42BP in an interstate proceeding in which a witness identity protection certificate for a local operative of the agency was filed—details of the

- 
- interstate proceeding that relate to the leave or order; and
- (d) if a witness identity protection certificate was cancelled under section 42BF—the reasons why the certificate was cancelled; and
  - (e) if a permission was given under section 42BG—the reasons why the permission was given; and
  - (f) any other information relating to witness identity protection certificates and the administration of this Part that the Minister considers appropriate.
- (3) The report must not include information that discloses, or may lead to the disclosure of, a local operative's identity, or where the local operative lives, unless the witness identity protection certificate for the local operative has been cancelled.
- (4) The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the day on which the Minister receives the report.

S. 42BJ  
inserted by  
No. 60/2004  
s. 3.

#### **42BJ Delegation**

- (1) Except as provided by this section (and despite any other Act or law to the contrary) the functions of a chief officer under this Part may not be delegated to any other person.
  - (2) A chief officer may delegate any of the chief officer's functions under this Part (except this power of delegation) to a senior officer of the law enforcement agency.
  - (3) For the avoidance of doubt, this section prevails over section 6A of the **Police Regulation Act 1958**.
-

(4) In this section—

*senior officer* means—

- (a) in relation to Victoria Police—a Deputy Commissioner;
- (b) in relation to the Australian Crime Commission—
  - (i) the Director National Operations;  
or
  - (ii) the General Manager National Operations; or
  - (iii) a member of staff of the Australian Crime Commission who is an SES employee or acting SES employee (within the meaning of the Australian Crime Commission Act 2002 of the Commonwealth) and who holds a position that is prescribed by the regulations for the purposes of this definition.

### **Division 3—Interstate witness identity protection certificates**

#### **42BK Application of Division**

- (1) This Division applies to a proceeding in this jurisdiction in which an interstate operative is, or may be, required to give evidence obtained as an interstate operative.
- (2) To remove any doubt, this Division does not affect the operation of the common law in relation to the protection of the identity of a person who is not an interstate operative who gives or intends to give evidence in a proceeding in this jurisdiction.

S. 42BK  
inserted by  
No. 60/2004  
s. 3.

**s. 42BL**

**S. 42BL**  
inserted by  
No. 60/2004  
s. 3.

**42BL Filing and notification**

- (1) An interstate witness identity protection certificate for an interstate operative in relation to a proceeding in this jurisdiction must be filed in the court before the interstate operative gives evidence in the proceeding.
- (2) The person who files the certificate must give a copy of it to each party to the proceeding at least 14 days (or the shorter period agreed to by the party) before the day the interstate operative is to give evidence.
- (3) The court may order the person filing the certificate to give a copy of it to someone else stated in the order.

**S. 42BM**  
inserted by  
No. 60/2004  
s. 3 (as  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 41(b))).

**42BM Effect of interstate witness identity protection certificate**

- (1) This section applies if—
  - (a) an interstate witness identity protection certificate for an interstate operative is filed in accordance with section 42BL(1); and
  - (b) either—
    - (i) a copy of the certificate is given to each party in accordance with section 42BL(2) and to each person in accordance with an order under section 42BL(3) (if any); or
    - (ii) the court gives leave for this section to apply despite non-compliance with section 42BL(2) or (3).
- (2) If this section applies—
  - (a) the interstate operative may give evidence in the proceeding under the assumed name, or court name, stated in the certificate; and

- 
- (b) subject to sections 42BO and 42BP—
- (i) a question must not be asked of a witness, including the interstate operative, that may lead to the disclosure of the interstate operative's identity or where the interstate operative lives; and
  - (ii) a witness, including the interstate operative, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the interstate operative's identity or where the interstate operative lives; and
  - (iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the interstate operative's identity or where the interstate operative lives.
- (3) For the purposes of this section, a person involved in a proceeding includes—
- (a) the court;
  - (b) a party to the proceeding;
  - (c) a person given leave to be heard or make submissions in the proceeding;
  - (d) a legal practitioner representing a person referred to in paragraph (b) or (c) or a lawyer assisting the court in the proceeding;
  - (e) any other officer of the court or person assisting the court in the proceeding;
  - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.
-

s. 42BN

S. 42BN  
inserted by  
No. 60/2004  
s. 3.

**42BN Orders to protect interstate operative's identity etc.**

- (1) The court in which an interstate witness identity protection certificate is filed may make any order it considers necessary or desirable to protect the identity of the interstate operative for whom the certificate is given or to prevent the disclosure of where the operative lives.
- (2) A person is guilty of an offence if—
  - (a) the person knows that, or is reckless as to whether, an order has been made under subsection (1); and
  - (b) the person intentionally, knowingly or recklessly contravenes the order.

Penalty: Imprisonment for 2 years.

- (3) Subsection (2) does not limit the court's power to punish for contempt.

S. 42BO  
inserted by  
No. 60/2004  
s. 3.

**42BO Disclosure of interstate operative's identity to presiding officer**

- (1) This section applies if an interstate witness protection certificate for an interstate operative in relation to a proceeding is filed in a court.
- (2) The presiding officer in the proceeding may require the interstate operative—
  - (a) to disclose his or her true identity to the presiding officer; and
  - (b) to provide the presiding officer with photographic evidence of that identity.

---

**42BP Application for disclosure of interstate operative's identity etc.**

S. 42BP  
inserted by  
No. 60/2004  
s. 3.

- (1) This section applies if an interstate witness protection certificate for an interstate operative in relation to a proceeding is filed in a court.
- (2) A party to the proceeding, or a lawyer assisting the court in the proceeding, may apply to the court—
  - (a) for leave—
    - (i) to ask a question of a witness, including the interstate operative, that may lead to the disclosure of the interstate operative's identity or where the interstate operative lives; or
    - (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the interstate operative's identity or where the interstate operative lives; or
  - (b) for an order requiring a witness, including the interstate operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the interstate operative's identity or where the interstate operative lives.
- (3) The court may—
  - (a) give leave for the party or lawyer to do anything mentioned in subsection (2)(a);
  - (b) make an order requiring a witness to do anything mentioned in subsection (2)(b).
- (4) However, the court must not give leave or make an order unless satisfied about each of the following—

- 
- (a) there is evidence that, if accepted, would substantially call into question the interstate operative's credibility; and
  - (b) it would be impractical to test properly the credibility of the interstate operative without allowing the risk of disclosure of, or disclosing, the interstate operative's identity or where the interstate operative lives; and
  - (c) it is in the interests of justice for the interstate operative's credibility to be able to be tested.
- (5) If there is a jury in the proceeding, the application must be heard in the absence of the jury.
- (6) Unless the court considers that the interests of justice require otherwise, the court must be closed when—
- (a) the application is made; and
  - (b) if leave is given or an order is made in response to the application—the question is asked (and answered), the evidence is given, the information is provided or the statement is made.

S. 42BQ  
inserted by  
No. 60/2004  
s. 3.

#### **42BQ Suppression and protection orders**

- (1) If an application is made under section 42BP(2), the court must make an order suppressing the publication of anything said when—
- (a) the application is made; and
  - (b) if leave is given or an order is made in response to the application—the question is asked (and answered), the evidence is given, the information is provided or the statement is made.



- 
- (2) Nothing in subsection (1) prevents the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.
  - (3) The court may make any other order it considers appropriate to protect the interstate operative's identity or to prevent the disclosure of where the interstate operative lives.
  - (4) A person is guilty of an offence if—
    - (a) the person knows that, or is reckless as to whether, an order has been made under subsection (1), (2) or (3); and
    - (b) the person intentionally, knowingly or recklessly contravenes the order.

Penalty: Imprisonment for 2 years.

- (5) Subsection (4) does not limit the court's power to punish for contempt.

**42BR Directions to jury**

- (1) This section applies if—
  - (a) an interstate witness identity protection certificate for an interstate operative in relation to a proceeding is filed in a court; and
  - (b) there is a jury in the proceeding; and
  - (c) the interstate operative gives evidence.
- (2) The court must (unless it considers it inappropriate) direct the jury not to give the interstate operative's evidence any more or less weight, or draw any adverse inferences against the defendant or another party to the proceeding, because—

**S. 42BR  
inserted by  
No. 60/2004  
s. 3.**

- (a) there is an interstate witness identity protection certificate for the interstate operative; or
- (b) the court has made an order under section 42BN or section 42BQ.

S. 42BS  
inserted by  
No. 60/2004  
s. 3.

#### **42BS Disclosure offences**

- (1) A person commits an offence if—
  - (a) an interstate witness identity protection certificate for an interstate operative has been given; and
  - (b) the person knows that, or is reckless as to whether, the certificate has been given; and
  - (c) the person intentionally, knowingly or recklessly does something (the *disclosure action*) that discloses, or is likely to lead to the disclosure of, the interstate operative's identity or where the interstate operative lives; and
  - (d) the person knows that, or is reckless as to whether, the certificate had not been cancelled under a corresponding law before the person does the disclosure action; and
  - (e) the person knows that, or is reckless as to whether, the disclosure action is not—
    - (i) authorised by leave or an order under section 42BP; or
    - (ii) authorised or permitted under a corresponding law.

Penalty: Imprisonment for 2 years.

- 
- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation; or
  - (b) knows that, or is reckless as to whether, the disclosure action—
    - (i) endangers or will endanger the health or safety of any person; or
    - (ii) prejudices or will prejudice the effective conduct of an investigation.
- Penalty: Imprisonment for 10 years.
- (3) An offence against subsection (2) is an indictable offence.
- (4) Nothing in this section prevents a person from complying with a requirement under section 42BO.
- (5) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.
-

s. 42C

Pt 2A  
(Heading and  
ss 42C–42Y)  
inserted by  
No. 4/1997  
s. 3.

**PART IIA—USE OF AUDIO VISUAL AND AUDIO LINKS<sup>11</sup>**

**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

S. 42C def. of  
*child*  
amended by  
Nos 72/2004  
s. 41, 48/2006  
s. 42(Sch.  
item 13.2).

---

(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, Youth and Families Act 2005**; and

- (b) a person in respect of whom a sentencing order within the meaning of the **Children, Youth and Families Act 2005** 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, Youth and Families Act 2005**; and
- (d) in any other case—a person who is under the age of 18 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;

s. 42D

*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 subsection (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 subsection (1) either on its own initiative or on the application of a party to the proceeding.

- 
- (4) Without limiting subsection (3), circumstances in which a court may vary or revoke a direction under subsection (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 subsection (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, Youth and Families Act 2005** and the child is the subject of the application; or
- (b) the proceeding is an appeal under section 328 or 329 of the **Children, Youth and Families Act 2005** 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.

S. 42F(1)(a)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 13.3(a)).

S. 42F(1)(b)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 13.3(b)).

- 
- (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
  - (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.
-



---

**42G Technical requirements**

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

- (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 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.

s. 42H

- 
- (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;
    - (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 subsection (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 subsection (1) are to be paid.

**42I Certain other laws not affected**

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

- (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**

**42J Application of Division**

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

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 offence<sup>12</sup>.

**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 special mention hearing or committal mention hearing held in connection with a committal proceeding; or

S. 42K(1)(c)  
amended by  
No. 10/1999  
s. 8(6).

(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 subsection (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.

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

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

- (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
  - (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 subsection (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.

s. 42M

- (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 subsection (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) Subsections (3) and (4) do not apply to an application made in accordance with subsection (5).
- (7) A court may also make a direction referred to in subsection (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.
- (8) The exercise of the power conferred on a court to make a direction referred to in subsection (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 subsection (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 subsection (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.
- (5) With leave of the court, an application for a direction referred to in subsection (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) Subsection (4) does not apply to an application made in accordance with subsection (5).
- (7) A court may also make a direction referred to in subsection (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.
-

s. 42N

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

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

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

- (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) Subsection (2) does not apply to an application made in accordance with subsection (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.

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

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

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—

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 subsection (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 subsection (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 subsection (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) Subsection (4) does not apply to an application made in accordance with subsection (5).
  - (7) A court may also make a direction referred to in subsection (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 subsection (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 subsection (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 subsection (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 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.

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

s. 42R

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

**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 subsection (2) of this section; and
  - (b) in subsection (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 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.

**42T Application of Surveillance Devices Act 1999**

The **Surveillance Devices Act 1999** 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—

S. 42T  
inserted by  
No. 4/1997  
s. 3,  
amended by  
No. 21/1999  
s. 40.

- (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

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

s. 42V

- (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 subsection (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. 42V  
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. 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) Subsection (1) has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.
- (3) Subsection (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.

---

**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. 42X  
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—

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

- (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.
-

s. 43

Pt 3 (Heading)  
substituted by  
No. 53/2006  
s. 3.

**PART III—PROOF OF DOCUMENTS, PROOF OF FACTS BY  
DOCUMENTS AND DOCUMENT UNAVAILABILITY**

**Division 1—Introductory**

No. 3674 s. 41.

**43 Provisions to be additional**

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.

No. 3674 s. 42.

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

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.

No. 3674 s. 43.

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

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.

---



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

**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.

No. 3674 s. 45.

---

**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.

No. 3674 s. 47.

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

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.

No. 3674 s. 48.

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

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.

**51 Documents admissible in England, Wales or Ireland without proof to be equally admissible in Victoria** No. 3674 s. 49.

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.

**52 Register of vessels to be proved by original or copy** No. 3674 s. 50.

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

s. 53

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.

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

### Division 2A—Reproductions of documents

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

### 53 Definitions

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.

**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

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),  
46/1998  
s. 7(Sch. 1).

**s. 53A**

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 subsection may be given 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
- (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.

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

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

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

**s. 53E**

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 subsection (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.

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

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

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.

**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 subsection (2) and subsection (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 subsection (1) shall not apply with respect to any reproduction referred to in section 53A.
- (3) The provisions of paragraph (b) of subsection (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—

**s. 53J**

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

S. 53J(3)(c)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 25.2).

S. 53J(3)(d)  
substituted by  
Nos 9699  
s. 23, 44/2001  
s. 3(Sch.  
item 40.1).

- (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) an authorised deposit-taking institution 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
  - (d) a public company (within the meaning of the Corporations Act) that is registered under the Life Insurance Act 1995 of the Commonwealth, being where the document in question relates to the life insurance business of that company.
- (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 subsection (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.
- (2) Where a reproduction is tendered as evidence no proof shall be required that the reproduction was compared with the original document.

S. 53L  
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. 53M  
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

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

**s. 53P**

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.

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

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

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 subsection (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

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.

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

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

- (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.
- (3) Subsection (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.

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

- 
- (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
  - (e) the parties to the proceedings consent to his not being required to attend.
- (6) Notwithstanding anything to the contrary in paragraph (b) of subsection (1) or in subsection (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 subsection (1) or subsection (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 medical practitioner registered under the **Health Professions Registration Act 2005**.

S. 55(8)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 20.1),  
97/2005  
s. 182(Sch. 4  
item 19.2).

- (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.

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

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

- (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.

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

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

- (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—

- (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)—

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

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.

S. 55AC  
inserted by  
No. 35/1999  
s. 35.

**55AC Evidence of a witness at a subsequent trial**

- (1) For the purposes of this section, two offences are related to one another if they are founded on the same facts or form or are part of a series of offences of the same or a similar character.
- (2) If on the trial of a person for an offence it appears to the court that a person has given evidence in a previous trial and that evidence was recorded and transcribed under Part VI and that person—
- (a) is refusing to be sworn or give evidence; or
  - (b) is dead; or
  - (c) is out of Victoria; or
  - (d) is so ill as not to be able to travel; or
  - (e) cannot, after diligent search be found; or
  - (f) has become mentally ill; or
  - (g) is keeping or is being kept out of the way to avoid giving evidence; or
  - (h) is incapable of giving evidence—

the evidence of that person, as recorded and transcribed, is admissible in any subsequent trial of the same person for the same offence or a related offence.



**55B Admissibility of statements produced by computers**

U.K. 1968  
s 5(1).  
S. 55B  
inserted by  
No. 8228 s. 3.

(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 subsection (2) are satisfied in relation to the statement and computer in question.

(2) The said conditions are—

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

- (a) that the document containing the statement was produced by the computer during a 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.

**s. 55B**

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

- (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 subsection (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, 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 subsection (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 subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) Any person who in a certificate tendered in evidence by virtue of subsection (4) wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, shall be guilty of an indictable offence.

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

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;

s. 55C

(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.

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

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

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

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

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.

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

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

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.

s. 58A

### Division 3A—Books of account

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

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

#### 58A Definitions

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

S. 58A def. of  
*bank*  
amended by  
Nos 29/1988  
s. 57(6),  
94/1990  
s. 40(5),  
repealed by  
No. 11/2001  
s. 3(Sch.  
item 25.3(a)).

\* \* \* \* \*

S. 58A def. of  
*book of  
account*  
amended by  
No. 11/2001  
s. 3(Sch.  
item 25.3(b)).

*book of account* includes ledger, day book, cash  
book, account book, and any other document  
used in the ordinary business of an  
authorised deposit-taking institution, 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.

**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  
inserted by  
No. 8228 s. 4,  
amended by  
No. 10231 s. 7.

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

**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.

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

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

- (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.

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

s. 58E

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

- (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. 58E  
inserted by  
No. 8228 s. 4.

**58E Verification of copy**

- (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.

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

- (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. 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.



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

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

- (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.

**58H Costs of application**

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

- (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.

s. 58I

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

### **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. 58J  
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.

## **Division 4—Further provisions relating to Australasian documents**

No. 3674 s. 52.

### **59 Definitions**

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.

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

No. 3674 s. 53.

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.

s. 61

No. 3674 s. 54. **61 Royal proclamation in Australasian State proved by copy**

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.

No. 3674 s. 55. **62 Proof of Government Gazette**

- (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.

No. 3674 s. 56. **63 Mode of proving proclamations etc. of Governor or Ministers of the Crown of Australasian State**

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.

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

No. 3674 s. 57.

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.

No. 3674 s. 58.

**65 Proof of certain public and corporation documents**

- (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.

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

No. 3674 s. 59.

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.

s. 67

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

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

- (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 subsection (1).

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

No. 3674 s. 61.  
S. 68  
amended by  
Nos 8565  
s. 24(9),  
57/1989  
s. 3(Sch.  
item 67.15),  
44/2001  
s. 3(Sch.  
item 40.2  
(a)-(c).

**68 Incorporation of any company how authenticated**

Prima facie evidence of the incorporation of a company incorporated or registered under the law of the Commonwealth or of 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 the Commonwealth or 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 to give the same purports to be verified by a statutory declaration made before any judge, magistrate or justice of the peace of the Commonwealth or that 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.

**69 Copies of documents relating to companies**

No. 3674 s. 62.  
S. 69  
amended by  
No. 8565  
s. 24(9),  
substituted by  
No. 8787  
s. 33(b).

- (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 Corporations Act) 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 subsection (1) to the registrar or an assistant or a deputy registrar shall be construed—
- (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

S. 69(1)  
amended by  
Nos 9699  
s. 23, 44/2001  
s. 3(Sch.  
item 40.3).

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

s. 70

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

- (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**.

#### Division 5—Further provisions relating to Victorian documents

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

#### 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.

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

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

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.

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

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

- (1) All maps, plans, documents or papers certified as provided in subsection (2) to be copies of original maps, plans, documents or papers in custody as provided in subsection (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 subsection (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 subsection (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.

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

### 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

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.

**74 Proof of will and death**

No. 3674 s. 67.

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.

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

Nos 3674  
s. 68, 6107  
s. 4(3).  
S. 75  
amended by  
Nos 9019  
s. 2(1)(Sch.  
item 64),  
57/1989  
s. 3(Sch. item  
67.17(a)-(c)).

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.

s. 75A

---

**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).

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

(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.

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

(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 subsection (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 person proposing to give the

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

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

S. 75A(3)  
amended by  
Nos 9902  
s. 2(1)(Sch.  
item 83),  
127/1986  
s. 102(Sch. 4  
item 9).

#### **Division 6—Judicial notice**

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

No. 3674 s. 69.

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.

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

No. 3674 s. 70.

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.

No. 3674 s. 71.

## 78 Public seals of States

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.

Nos 3674  
s. 72, 4654  
s. 3, 5908  
s. 16(1).  
S. 79  
amended by  
Nos 6961  
s. 2(Sch.),  
8565 s. 24(9),  
9019  
s. 2(1)(Sch.  
item 65), 9713  
s. 55(c),  
substituted by  
No. 10074 s. 9.

## 79 Certain signatures and seals to be judicially noticed

- (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—

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 office<sup>13</sup>.

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).

- (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 subsection (2) and any Order of the Governor in Council made under subsection (2) as in force before the commencement of section 9 of the **Evidence (Amendment) Act 1985**.



- (4) An Order made under subsection (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 subsection (3).

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

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

No. 3674 s. 73.

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.

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

No. 3674 s. 74.

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**

No. 3674 s. 75.

**82 Definitions**

In this Division—

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

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

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

*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.

No. 3674 s. 76.

**83 Proof of by-laws**

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.

No. 3674 s. 77.

**84 Form of certificate**

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).

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 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.

**85 Technical proof unnecessary**

No. 3674 s. 78.

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.

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

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).

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**

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

#### **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 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.

- (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.

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

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

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

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.

### **89 Evidence of previous summary conviction**

In any legal proceeding whatsoever in order to prove a previous summary conviction before the Magistrates' Court<sup>14</sup>—

- (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;

No. 3674 s. 82.  
S. 89  
amended by  
Nos 9019  
s. 2(1)(Sch.  
item 66),  
57/1989  
s. 3(Sch. item  
67.23(a)(c)).

**s. 89A**

S. 89(c)  
amended by  
Nos 9059  
s. 2(1)(Sch.  
item 15),  
57/1989  
s. 3(Sch. item  
67.23(b)(i)(ii)).

- (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—

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)  
repealed<sup>15</sup>,  
new Pt 3  
Div. 9  
(Heading and  
ss 89A–89E)  
inserted by  
No. 53/2006  
s. 4.

**Division 9—Document unavailability**

S. 89A  
inserted by  
No. 53/2006  
s. 4.

**89A Meaning of unavailability of document**

For the purposes of this Division, a document is unavailable in a civil proceeding if—

- (a) the document is, or has been but is no longer, in the possession, custody or power of a party to the civil proceeding; and
- (b) the document has been destroyed, disposed of, lost, concealed or rendered illegible, undecipherable or incapable of identification (whether before or after the commencement of the proceeding).

**89B Court may make ruling or order**

S. 89B  
inserted by  
No. 53/2006  
s. 4.

- (1) If, in a civil proceeding, it appears to the court that—
- (a) a document is unavailable; and
  - (b) no reproduction of the document is available in place of the original document; and
  - (c) the unavailability of the document is likely to cause unfairness to a party to the proceeding—

the court, on its own motion or on the application of a party, may make any ruling or order that the court considers necessary to ensure fairness to all parties to the proceeding, having regard to the matters set out in section 89C.

- (2) Without limiting subsection (1), a ruling or order may be—
- (a) that an adverse inference will be drawn from the unavailability of the document;
  - (b) that a fact in issue between the parties be presumed to be true in the absence of evidence to the contrary;
  - (c) that certain evidence not be adduced;
  - (d) that all or part of a defence or statement of claim be struck out;
  - (e) that the evidential burden of proof be reversed in relation to a fact in issue.

s. 89C

S. 89C  
inserted by  
No. 53/2006  
s. 4.

### 89C Matters the court must consider

Before making an order under section 89B, the court must have regard to—

- (a) the circumstances in which the document became unavailable; and
- (b) the impact of the unavailability of the document on the proceeding, including whether the unavailability of the document will adversely affect the ability of a party to prove its case or make a full defence; and
- (c) any other matter that the court considers relevant.

S. 89D  
inserted by  
No. 53/2006  
s. 4.

### 89D Relationship of this Division with VCAT Act

Despite anything to the contrary in the **Victorian Civil and Administrative Tribunal Act 1998**, this Division applies to a proceeding in the Tribunal within the meaning of that Act—

- (a) as if a reference to a civil proceeding were a reference to a proceeding in the Tribunal; and
- (b) a reference to the court were a reference to the Tribunal.

S. 89E  
inserted by  
No. 53/2006  
s. 4.

### 89E Operation of Public Records Act 1973

Nothing in this Division affects the operation of the **Public Records Act 1973**.

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

\* \* \* \* \*



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

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

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

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

- (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.

\* \* \* \* \*

New s. 91  
inserted by  
No. 74/1993  
s. 3,  
repealed by  
No. 75/2005  
s. 49(Sch. 4  
item 1).

---

**PART IV—OATHS AFFIRMATIONS AFFIDAVITS  
DECLARATIONS**

**Division 1—Introductory**

No. 3674 s. 92.

**99 Definition**

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

**Division 2—Oaths and affirmations**

No. 3674 s. 93.

**100 Manner of administration of oaths**

- (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 subsection (1) or subsection (2) would not be binding on the conscience of the person about to be sworn—

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

administer the oath in the form and manner set out in the said subsection (1) or subsection (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 subsection.

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

**s. 101**

- (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.

No. 3674 s. 94.

**101 Swearing with uplifted hand**

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.

No. 3674 s. 95.  
S. 102  
substituted by  
No. 10074  
s. 10(1).

**102 When affirmation may be made instead of oath**

Where—

- (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.

**103 Form of oral affirmation**

No. 3674 s. 96.

- (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."

**104 Validity of oath not affected by absence of religious belief**

No. 3674 s. 97.

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**

No. 3674 s. 98.  
S. 105  
amended by  
Nos 51/1989  
s. 144(2)(b),  
57/1989  
s. 3(Sch.  
item 67.25).

**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. 99.  
S. 106  
amended by  
No. 51/1989  
s. 144(2)  
(c)(i)(ii).

**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 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.

**Division 4—Statutory declarations**

Pt 4 Div. 4  
(Heading)  
amended by  
No. 51/1989  
s. 144(2)(d).

**107 Statutory declarations**

No. 3674  
s. 100.

(1) A statutory declaration must—

S. 107  
substituted by  
No. 51/1989  
s. 144(2)(e).

(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.

**107A List of persons who may witness statutory declarations**

S. 107A  
inserted by  
No. 51/1989  
s. 144(2)(e) (as  
amended by  
No. 34/1990  
s. 4(Sch. 3  
item 16)).

(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 public notary;

S. 107A(1)(b)  
substituted by  
No. 52/2001  
s. 13(2)(a).

**s. 107A**

S. 107A(1)(c)  
substituted by  
No. 18/2005  
s. 18(Sch. 1  
item 40.4).

(c) an Australian lawyer (within the meaning of  
the **Legal Profession Act 2004**);

S. 107A(1)(d)  
substituted by  
No. 18/2005  
s. 18(Sch. 1  
item 40.4).

(d) a clerk to an Australian lawyer;

(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;

S. 107A(1)(i)  
amended by  
No. 14/2006  
s. 16.

(i) a person registered as a patent attorney under  
Chapter 20 of the Patents Act 1990 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 <b>Local Government Act 1989</b> ;   | S. 107A(1)(o) substituted by No. 125/1993 s. 20(4)(b).   |
| (p) a medical practitioner registered under the <b>Health Professions Registration Act 2005</b> ;  | S. 107A(1)(p) amended by Nos 23/1994 s. 118(Sch. 1 item 20.2), 97/2005 s. 182(Sch. 4 item 19.3).               |
| (q) a dentist registered under the <b>Health Professions Registration Act 2005</b> ;   | S. 107A(1)(q) substituted by No. 26/1999 s. 107(Sch. item 3), amended by No. 97/2005 s. 182(Sch. 4 item 19.4). |
| (r) a veterinary practitioner;   | S. 107A(1)(r) amended by No. 58/1997 s. 96(Sch. item 4).   |
| (s) a pharmacist;  |  |
| (t) a principal in the teaching service;   |  |
| (u) the manager of an authorised deposit-taking institution;   | S. 107A(1)(u) amended by No. 11/2001 s. 3(Sch. item 25.4).   |
| (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

S. 107A(1)(y)  
amended by  
No. 84/1994  
s. 62,  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 72).

(y) a person employed under Part 3 of the **Public Administration Act 2004** 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 subsection (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 subsection 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**

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.

\* \* \* \* \*

No. 3674  
s. 103.

S. 110A  
inserted by  
No. 9407 s. 3,  
repealed by  
No. 51/1989  
s. 144(2)(h).

s. 111

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 subsection (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.

S. 111A(3)  
repealed by  
No. 9156  
s. 2(a).

\* \* \* \* \*

S. 111A(4)  
amended by  
No. 9156  
s. 2(b)(i)(ii).

- (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.

---

**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.

\* \* \* \* \*

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).

s. 123C

Pt 4 Div. 8  
(Heading and  
ss 118–122)  
amended by  
Nos 6540  
s. 2(a)–(c),  
6716  
s. 2(Sch.),  
7366 s. 5, 7460  
s. 4, 7876  
s. 2(3), 8139  
ss 3–5, 9042  
s. 2(a)–(g),  
9427  
s. 6(1)(Sch. 5  
item 55), 9554  
s. 2(2)(Sch. 2  
item 68),  
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. 51/1989  
s. 144(2)(j).

No. 3674  
s. 115.

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).

\* \* \* \* \*

**Division 9—Affidavits in Victoria<sup>16</sup>**

**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—

- |  |   |
|--|---|
| (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)). |
| (c) a justice of the peace or a bail justice;  | S. 123C(1)(c) substituted by No. 51/1989 s. 144(2) (k)(i)(C).   |
| (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)(d) substituted by No. 51/1989 s. 144(2) (k)(i)(D).   |
| (da) the registrar of probates or an assistant registrar of probates;  | S. 123C(1)(da) inserted by No. 51/1989 s. 144(2) (k)(i)(D).   |
| (db) a senior member or ordinary member of the Victorian Civil and Administrative Tribunal who, immediately before the commencement of section 8.2.1 of the <b>Legal Profession Act 2004</b> , was the registrar or a deputy registrar of the Legal Profession Tribunal; | S. 123C(1)(db) inserted by No. 35/1996 s. 453(Sch. 1 item 29.5(a)), substituted by No. 18/2005 s. 18(Sch. 1 item 40.5).                   |

Evidence Act 1958  
No. 6246 of 1958

Part IV—Oaths Affirmations Affidavits Declarations

**s. 123C**

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;

S. 123C(1)(f)  
substituted by  
No. 52/2001  
s. 13(2)(b).

(f) a public notary;

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),  
substituted by  
No. 18/2005  
s. 18(Sch. 1  
item 40.6).

(g) a legal practitioner;

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),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 72).

(gb) a person employed under Part 3 of the  
**Public Administration Act 2004** with a  
classification that is prescribed as a  
classification to which this section applies;



- 
- (gc) a senior officer of a Council as defined in the **Local Government Act 1989**;
- (gd) a person registered as a patent attorney under Chapter 20 of the Patents Act 1990 of the Commonwealth;
- (ge) a fellow of the Institute of Legal Executives (Victoria);
- (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 subsection (1) attached or appended to any affidavit within the meaning of that subsection.
- (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.

S. 123C(1)(gc) inserted by No. 51/1989 s. 144(2) (k)(i)(F), substituted by No. 125/1993 s. 20(4)(c).

S. 123C(1)(gd) inserted by No. 51/1989 s. 144(2) (k)(i)(F), amended by No. 14/2006 s. 17.

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)).

S. 123C(3) substituted by No. 51/1989 s. 144(2)(k)(ii).

Penalty applying to this subsection: 1 penalty unit.

**s. 124**

S. 123C(4)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 29.5  
(c)(i)(ii)).

(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 subsection (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.

S. 123C(5)  
amended by  
No. 51/1989  
s. 144(2)(k)(iii).

(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.

Penalty: 1 penalty unit.

**Division 10—Affidavits in places out of Victoria**

No. 3674  
s. 116.

**124 Taking oaths out of Victoria**

Nos 5183 s. 8,  
5703 s. 2, 5896  
s. 2, 6112 s. 2.

(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 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 subsection *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.

s. 125

S. 124(3)  
amended by  
No. 51/1989  
s. 144(2)(i)(ii).

- (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 subsection (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 subsections 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 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)(i)(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<sup>17</sup>**

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 subsection (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.

S. 127(3)  
amended by  
No. 52/2001  
s. 13(2)(c).

(3) In this section the expression *notarial acts* includes all acts matters and things which in Victoria or elsewhere a public notary 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 justice<sup>18</sup>**

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.

S. 128(1)  
amended by  
Nos 10074  
s. 11(3)(b),  
51/1989  
s. 144(2)(p).

(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. 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 subsection (1) may include such terms and conditions as the person acting judicially thinks fit.

S. 130(3)  
amended by  
Nos 9156  
s. 3(2)(a)(ii),  
78/2000  
s. 5(1).

(3) Subject to subsection (3A), if 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(3A)  
inserted by  
No. 78/2000  
s. 5(2).

(3A) If the Secretary to the Department of Justice has entered into an agreement with a person for the provision by that person of recording and transcription services to the court concerned, the evidence must be recorded and transcribed by or on behalf of that person unless a party to the legal proceeding shows grounds to the satisfaction of the person acting judicially in the proceeding that another person should record and transcribe the evidence and the person acting judicially so directs.



(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.

S. 130(4)  
amended by  
Nos 9156  
s. 3(2)(a)(iii),  
100/1995  
s. 22(3).

**131 As to methods of recording evidence**

No. 5877 s. 2  
[123].

Any evidence recorded under this Part shall be recorded by—

S. 131  
amended by  
No. 9156  
s. 3(2)(b).

(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)(Sch. 1  
item 57),  
substituted by  
No. 100/1995  
s. 23(1).

\* \* \* \* \*

Ss 132–133  
repealed.<sup>19</sup>

**134 Persons recording evidence under this Part to be officers of the court**

No. 5877 s. 2  
[126].

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.

S. 134  
amended by  
Nos 8752  
s. 6(1)(e), 9156  
s. 3(2)(d),  
100/1995  
s. 23(3)(a)–(c).

s. 135

No. 5877 s. 2  
[127].

S. 135  
amended by  
No. 8228  
s. 6(a).

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. 135(2)  
inserted by  
No. 8228  
s. 6(b),  
amended by  
Nos 8752  
s. 6(1)(f)(iii),  
100/1995  
s. 23(5).

S. 136  
amended by  
No. 9156  
s. 3(2)(f),  
repealed by  
No. 100/1995  
s. 23(6).

**135 Records made under this Part to be received as  
prima facie evidence of matter therein contained**

- (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 anything recorded in the notes, record or transcript.
- (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.

\* \* \* \* \*

**137 Penalty for falsely recording evidence**

No. 5877 s. 2  
[129].  
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.<sup>20</sup>

**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.

- (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)(a)  
repealed by  
No. 100/1995  
s. 23(7)(a).

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.<sup>21</sup>

Evidence Act 1958  
No. 6246 of 1958  
Part VI—Recording of Evidence

s. 140

(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).

S. 140(2)(a)  
amended by  
Nos 10257  
s. 84(e)(i)(ii),  
100/1995  
s. 23(8)(a).

(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)(b)  
repealed by  
No. 100/1995  
s. 23(8)(b).

\* \* \* \* \*

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)(Sch. 2  
item 16).

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)(Sch. 2  
item 16).

**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)(Sch. 2  
item 16).

**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.

**146 Impounding documents**

S. 146  
amended by  
No. 110/1986  
s. 140(2).

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.

**s. 149B**

- 
- (3) Subsection (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)(Sch. 2  
item 69),  
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.

s. 151

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. 151A  
inserted by  
No. 60/2004  
s. 4.

## 151A Supreme Court—limitation of jurisdiction

It is the intention of section 42BE(1) to alter or vary section 85 of the **Constitution Act 1975**.

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
  - (c) at inquests held by coroners.

S. 152(1)(b)  
amended by  
No. 57/1989  
s. 3(Sch. item  
67.28).

S. 152(1)(c)  
amended by  
No. 10257  
s. 84(g).

- 
- (2) The Governor in Council may make regulations for or with respect to—
- (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
  - (a) prescribing classification for the purposes of section 107A; and
  - (b) prescribing classification for the purposes of section 123C; and
  - (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.

S. 152(2)  
inserted by  
No. 34/1990  
s. 6(b).

S. 152(2)(aa)  
inserted by  
No. 8/1991  
s. 11(2).

S. 152(2)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 152(2)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**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 subsection (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 subsection (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**.

**155 Transitional provision—Magistrates' Court (Committal Proceedings) Act 2000**

S. 155  
inserted by  
No. 92/2000  
s. 14.

The amendment of section 37A(1) of this Act made by section 13 of the **Magistrates' Court (Committal Proceedings) Act 2000** applies to applications for leave under Rule (2) made under that section on or after the commencement of section 13 of that Act irrespective of when the committal proceeding is commenced or when any offence to which the proceeding relates is alleged to have been committed.

**156 Transitional provision—Evidence (Witness Identity Protection) Act 2004**

S. 156  
inserted by  
No. 60/2004  
s. 5.

- (1) A witness identity protection certificate may be given under Division 2 of Part IIAA in relation to an interstate proceeding (within the meaning of that Part) that is commenced on or after the commencement day.
- (2) An interstate witness identity certificate may be filed under Division 3 of Part IIAA in a proceeding (within the meaning of that Part) in this jurisdiction that is commenced on or after the commencement day.

s. 156A

(3) In this section—

*commencement day* means the day on which section 3 of the **Evidence (Witness Identity Protection) Act 2004** comes into operation.

S. 156A  
inserted by  
No. 15/2005  
s. 10.

**156A Transitional provision—Sentencing (Further Amendment) Act 2005**

Division 3A of Part II, inserted by section 9 of the **Sentencing (Further Amendment) Act 2005**, applies to a proceeding for an offence commenced on or after the commencement of that section, regardless of when the offence is alleged to have been committed.

S. 157  
inserted by  
No. 72/2004  
s. 42.

**157 Transitional provision—Children and Young Persons (Age Jurisdiction) Act 2004**

An amendment made to this Act by a provision of the **Children and Young Persons (Age Jurisdiction) Act 2004** applies to a proceeding commenced on or after the commencement of that provision.

S. 158  
inserted by  
No. 53/2006  
s. 5.

**158 Transitional provision—Evidence (Document Unavailability) Act 2006**

Division 9 of Part III, as inserted by section 4 of the **Evidence (Document Unavailability) Act 2006**, applies to a civil proceeding commenced on or after the commencement of that Act, regardless of when the document was destroyed, disposed of, lost, concealed or rendered illegible, undecipherable or incapable of identification.



**158A Transitional provision—Crimes (Sexual Offences) Act 2006**

S. 158A  
inserted by  
No. 2/2006  
s. 38A (as  
amended by  
No. 76/2006  
s. 12).

- (1) An amendment made to this Act by a provision of section 25, 29, 30, 33 or 37 of the **Crimes (Sexual Offences) Act 2006** applies to—
  - (a) any legal proceeding commenced before the commencement of that provision if at the commencement of that provision—
    - (i) the hearing of the proceeding had not commenced; or
    - (ii) no evidence had been given on the hearing of the proceeding; and
  - (b) any legal proceeding that commences on or after the commencement of that provision.
- (2) An amendment made to this Act by a provision of section 27, 34 or 38 of the **Crimes (Sexual Offences) Act 2006** applies to any legal proceeding that commences on or after the commencement of that provision.

**159 Transitional provision—Crimes (Sexual Offences) (Further Amendment) Act 2006**

S. 159  
inserted by  
No. 76/2006  
s. 8.

The amendments made to this Act by sections 5, 6 and 7 of the **Crimes (Sexual Offences) (Further Amendment) Act 2006** apply to any proceeding that commences on or after the commencement of those provisions, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

Sch. 1

---

**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 physical 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]]<sup>22</sup> on the                      day of  
then and there to testify what he or she knows concerning the matters then to  
be inquired of in the hearing of [here specify name of cause or matter] and he  
or she is to remain at that place until he or she 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),  
45/2001  
s. 41(2)(a)-(d).

Sch. 3

**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 presence<sup>23</sup> 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)(c).

\_\_\_\_\_

\* \* \* \* \*

## ENDNOTES

### 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**

*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

Evidence Act 1958  
No. 6246 of 1958

Endnotes

---

**Justices (Amendment) Act 1969, No. 7876/1969**

*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**

*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

**Endnotes**

---

**Crimes (Sexual Offences) Act 1980, No. 9509/1980**

*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**

*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

Evidence Act 1958  
No. 6246 of 1958

Endnotes

**Corrections Act 1986, No. 117/1986**

*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)

*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**

**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 Act 1958  
No. 6246 of 1958

Endnotes

---

**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**

**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**

*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**

Evidence Act 1958  
No. 6246 of 1958

Endnotes

---

**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: Government Gazette 18.6.98 p. 1512  
*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**

**Crimes, Confiscation and Evidence Acts (Amendment) Act 1998, No. 80/1998**

*Assent Date:* 13.11.98  
*Commencement Date:* Pt 4 (s. 6) on 20.10.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Magistrates' Court (Amendment) Act 1999, No. 10/1999**

*Assent Date:* 11.5.99  
*Commencement Date:* S. 8(6) on 1.7.99: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Crimes (Criminal Trials) Act 1999, No. 35/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 35 on 1.9.99: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Surveillance Devices Act 1999, No. 21/1999**

*Assent Date:* 18.5.99  
*Commencement Date:* S. 40 on 1.1.00: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Dental Practice Act 1999, No. 26/1999**

*Assent Date:* 1.6.99  
*Commencement Date:* S. 107(Sch. item 3) on 1.7.00: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**



---

**Courts and Tribunals Legislation (Miscellaneous Amendments) Act 2000,  
No. 78/2000**

*Assent Date:* 28.11.00  
*Commencement Date:* S. 5 on 28.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Magistrates' Court (Committal Proceedings) Act 2000, No. 92/2000**

*Assent Date:* 5.12.00  
*Commencement Date:* Ss 13, 14 on 1.7.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001,  
No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 25) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 40) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Corrections (Custody) Act 2001, No. 45/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 41 on 1.3.02: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Public Notaries Act 2001, No. 52/2001**

*Assent Date:* 25.9.01  
*Commencement Date:* S. 13(2) on 6.6.02: Government Gazette 30.5.02  
p. 1118  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Justice Legislation (Sexual Offences and Bail) Act 2004, No. 20/2004**

*Assent Date:* 18.5.04  
*Commencement Date:* S. 8 on 19.5.04: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Evidence (Witness Identity Protection) Act 2004, No. 60/2004 (as amended by  
No. 18/2005)**

*Assent Date:* 12.10.04  
*Commencement Date:* Ss 3–5 on 1.7.06: Government Gazette 29.6.06  
p. 1314  
*Current State:* This information relates only to the provision/s  
amending the **Evidence Act 1958**

**Endnotes**

---

**Children and Young Persons (Age Jurisdiction) Act 2004, No. 72/2004**

*Assent Date:* 9.11.04  
*Commencement Date:* Ss 41, 42 on 1.7.05: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 72) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Sentencing (Further Amendment) Act 2005, No. 15/2005**

*Assent Date:* 10.5.05  
*Commencement Date:* Ss 9, 10 on 11.5.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 40) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Defamation Act 2005, No. 75/2005**

*Assent Date:* 2.11.05  
*Commencement Date:* S. 49(Sch. 4 item 1) on 1.1.06: s. 2  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 19) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Crimes (Sexual Offences) Act 2006, No. 2/2006 (as amended by No. 76/2006)**

*Assent Date:* 7.3.06  
*Commencement Date:* S. 35 on 22.8.06: Special Gazette (No. 214) 22.8.06 p. 1; ss 24–34, 36–38A on 1.12.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006**

*Assent Date:* 11.4.06  
*Commencement Date:* Ss 16, 17 on 12.4.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

---

**Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 42(Sch. item 13) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Evidence (Document Unavailability) Act 2006, No. 53/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* Ss 3–5 on 1.9.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

**Crimes (Sexual Offences) (Further Amendment) Act 2006, No. 76/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* Ss 5–8 immediately after s. 38 of the **Crimes (Sexual Offences) Act 2006** i.e. 1.12.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Evidence Act 1958**

---

### 3. Explanatory Details

<sup>1</sup> 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.

<sup>2</sup> 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 subsection (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.

<sup>3</sup> S. 15: See section 30.

<sup>4</sup> S. 18: See note 3.

<sup>5</sup> 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.

<sup>6</sup> S. 21E: See note 5.

<sup>7</sup> S. 21H: See note 5.

<sup>8</sup> 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.

<sup>9</sup> 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 subsection (1)—
- (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.

<sup>10</sup> S. 26: See section 399 of the **Crimes Act 1958**.

<sup>11</sup> Pt 2A: See note 2.

<sup>12</sup> 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 1999**, proceedings under the **Confiscation Act 1997** and proceedings under Division 1 or 2 of Part 4 of the **Sentencing Act 1991**.

<sup>13</sup> 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.

<sup>14</sup> S. 89: See section 18 of the **Magistrates' Court Act 1989**.

<sup>15</sup> 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).

<sup>16</sup> 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 subsection (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 subsection (6), shall not act as such a commissioner after the expiration of six months after the commencement of this 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.

<sup>17</sup> S. 126: See section 103.

<sup>18</sup> S. 128: See note 16.

<sup>19</sup> Ss 132–133:

S. 132 substituted by No. 8752 s. 6(1)(c), amended by No. 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).

S. 133 amended by Nos 8003 s. 3(c), 9156 s. 3(2)(c), repealed by No. 100/1995 s. 23(2).

<sup>20</sup> Ss 138, 139:

S. 138 repealed by No. 8752 s. 6(1)(g).

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).

<sup>21</sup> S. 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).

<sup>22</sup> Schedule 2: See note 2.

<sup>23</sup> 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.