

Version No. 183
Evidence (Miscellaneous Provisions) Act
1958

No. 6246 of 1958

Version incorporating amendments as at
15 October 2014

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1 Short title and commencement	1
3 Definitions	2
PART I—THE MEANS OF OBTAINING EVIDENCE	6
Division 1—Orders and commissions to examine witnesses	6
4 Order to examine witnesses	6
6 Operation of other laws	8
Division 1A—Examination of witnesses abroad	9
9A Definitions	9
9B Proceedings in superior courts	10
9C Proceedings in inferior courts	12
9D Exclusion of evidence in criminal proceeding	13
9E Operation of other laws	13
Division 1B—Examination of witnesses outside the State but within Australia	13
9F Application of Division	13
9G Definitions	14
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
Division 1C—Taking of evidence for foreign and Australian courts	18
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
9O Privilege of witnesses	21

<i>Section</i>	<i>Page</i>
9P Offence	22
9Q Operation of other laws	22
Division 3—Prisoners	23
12 Prisoner may be brought before court to give evidence without writ of habeas corpus	23
Division 6—Disclosure of information relating to applications for legal aid	25
21D Definitions	25
21E Disclosure of information etc. relating to proposed applications	27
21F Disclosure of information etc. relating to applications	28
21G Disclosure of information etc. where applicant has died	28
21H Application of this Division	29
Division 7—Family mediations	29
21I Definitions	29
21J Admissions etc. made at mediation conferences	30
Division 8—Dispute settlement centres	30
21K Definitions	30
21L Admissions etc. at mediation conferences	30
21M Confidentiality	31
21N Exoneration from liability	32
PART II—WITNESSES	33
Division 2—Privileges disabilities and obligations of witnesses	33
28 Confessions to doctors	33
Division 2A—Confidential communications	35
32AB Guiding principles	35
32B Definitions	36
32C Exclusion of evidence of confidential communications	38
32D Restriction on granting leave	39
32E Limitations on privilege	41
32F Ancillary orders available on a granting of leave	43
32G Operation of Division	43
PART IIAA—WITNESS IDENTITY PROTECTION	48
Division 1—Introductory	48
42BA Definitions	48

<i>Section</i>	<i>Page</i>
Division 2—Witness identity protection certificates for local operatives	53
42BB Giving witness identity protection certificate	53
42BC Statutory declaration by local operative	54
42BD Form of witness identity protection certificate	55
42BE Protection of decision to give certificate	57
42BF Cancellation of witness identity protection certificate	57
42BG Permission to give information disclosing operative's identity etc.	58
42BH Disclosure offences	59
42BI Reports about witness identity protection certificates	60
42BJ Delegation	61
Division 3—Interstate witness identity protection certificates	62
42BK Application of Division	62
42BL Filing and notification	62
42BM Effect of interstate witness identity protection certificate	63
42BN Orders to protect interstate operative's identity etc.	64
42BO Disclosure of interstate operative's identity to presiding officer	65
42BP Application for disclosure of interstate operative's identity etc.	65
42BQ Suppression and protection orders	67
42BR Directions to jury	68
42BS Disclosure offences	68
PART IIA—USE OF AUDIO VISUAL AND AUDIO LINKS	71
Division 1—Definitions	71
42C Definitions	71
Division 2—Persons other than accused	73
42D Application of Division	73
42E Appearance, etc. by audio visual link or audio link	73
42F Special provisions applicable to certain proceedings involving children	74
42G Technical requirements	76
42H Costs	77
42I Certain other laws not affected	78
Division 3—Appearance by the accused	78
42J Application of Division	78
42K Appearance of adult accused before court	79
42L Making of direction for physical appearance in section 42K(1) proceedings	80

<i>Section</i>	<i>Page</i>
42M Making of direction for audio visual appearance in section 42K(2) proceedings	82
42N Application for making of direction under section 42K(4)	84
42O Appearance before court of accused who is a child	85
42P Making of direction for audio visual appearance by child	85
42Q Practice directions	87
42R Requirements for audio visual appearance by accused	87
42S Protection of communication between accused and legal representative	88
42T Application of Surveillance Devices Act 1999	88
Division 4—General	89
42U Putting documents to a remote person	89
42V Direction to jury in criminal trial	90
42W Application of laws about witnesses, etc.	90
42X Arraignment	90
42Y Administration of oaths and affirmations	91
PART III—PROOF OF DOCUMENTS, PROOF OF FACTS BY DOCUMENTS AND DOCUMENT UNAVAILABILITY	92
Division 2A—Reproductions of documents	92
53Q Micro-film etc. may be preserved in lieu of document	94
Division 4—Further provisions relating to Australasian documents	96
59 Definitions	96
Division 5—Further provisions relating to Victorian documents	98
70 Mode of proving proclamations, orders and regulations of Board of Land and Works	98
71 Government Gazette to be evidence of act of Board of Land and Works	99
74 Evidence of contents of will	99
Division 6—Judicial notice	100
80 Judicial notice of certain seals etc	101
81 Effect of judicial or official notice	101
Division 9—Document unavailability	103
89A Meaning of unavailability of document	103
89B Court may make ruling or order	103
89C Matters the court must consider	104
89D Relationship of this Division with VCAT Act	104
89E Operation of Public Records Act 1973	105
89F Division to be in addition to Evidence Act 2008	105

<i>Section</i>	<i>Page</i>
PART IV—OATHS AFFIRMATIONS AFFIDAVITS DECLARATIONS	106
Division 1—Introductory	106
99 Definition	106
Division 2—Oaths and affirmations	106
100 Application of Division	106
101 Manner of administration of oaths and affirmations	106
102 Choice of oath or affirmation	107
103 Requirements for oaths	107
104 Affirmations in writing	107
Division 3—Declarations in public departments	108
105 Declarations may be substituted for oaths and affidavits	108
106 Such substitution to be notified in Gazette	108
Division 4—Statutory declarations	109
107 Statutory declarations	109
107A List of persons who may witness statutory declarations	109
108 Objection that matter is not one requiring verification not to be taken	113
109 Name and address of person witnessing declaration to appear on declaration	113
Division 5—Courts and officers	114
110 Courts etc. may administer oaths to witnesses	114
111 Power of certain officers of courts etc. to administer oaths	114
111A Person appointed by foreign authority may take evidence and administer oaths	114
Division 6—Gaolers	115
112 Affidavits of prisoners	115
Division 9—Affidavits in Victoria	116
123C Affidavits in Victoria how sworn and taken	116
Division 10—Affidavits in places out of Victoria	120
124 Taking oaths out of Victoria	120
125 Affidavits and declarations required to be made before a justice sufficient if made before a justice elsewhere	123
Division 11—Jurat	123
126 Jurat to state where and when oath is taken	123
126A Jurat etc. to affidavit to be prima facie evidence of execution	124

<i>Section</i>	<i>Page</i>
Division 12—Miscellaneous	124
126B False or misleading statement as to swearing etc. of affidavit	124
PART V—ATTESTATIONS VERIFICATIONS ACKNOWLEDGMENTS NOTARIAL ACTS ETC.	126
127 Certain provisions of Part IV apply to certain attestations	126
128 Attestations etc. before a justice	127
PART VI—RECORDING OF EVIDENCE	128
130 Power to person acting judicially to direct that evidence be recorded	128
131 As to methods of recording evidence	129
134 Persons recording evidence under this Part to be officers of the court	129
135 Records made under this Part to be received as prima facie evidence of matter therein contained	130
137 Penalty for falsely recording evidence	131
140 Power to Governor in Council to regulate fees	131
PART VII—OFFENCES PERJURY FORGERY FALSE CERTIFICATES ETC.	133
141 Persons making wilful false statements on oath, declaration etc. guilty of perjury	133
142 Forgery, using etc. false documents an indictable offence	133
143 Printing or using documents falsely purporting to be printed by government printer an indictable offence	134
144 Giving false certificates an indictable offence	135
145 Interpretation provisions to apply to this Part	135
PART VIII—MISCELLANEOUS	136
149A Admissions of fact in confiscation proceedings	136
151 Abolition of extra-judicial oaths	137
151A Supreme Court—limitation of jurisdiction	137
152 Regulations	138
155 Transitional provision— Magistrates' Court (Committal Proceedings) Act 2000	139
156A Transitional provision— Sentencing (Further Amendment) Act 2005	139
158A Transitional provision— Crimes (Sexual Offences) Act 2006	140
159 Transitional provision— Crimes (Sexual Offences) (Further Amendment) Act 2006	141

<i>Section</i>	<i>Page</i>
160 Transitional provision— Justice Legislation Amendment (Sex Offences Procedure) Act 2008	141
161 Transitional provision— Statute Law Amendment (Evidence Consequential Provisions) Act 2009	142
162 Transitional provision—interpretation of references	142
163 Transitional provision— Criminal Procedure Act 2009	143
164 Transitional provision— Inquiries Act 2014	143
165 Validation of certain acts and documents	144
<hr/>	
SCHEDULES	147
SCHEDULE 2	147
SCHEDULE 3	148
Part 1—Form of Oath and Affirmation	148
Part 2—Affirmations in Writing	148
<hr/> <hr/>	
ENDNOTES	149
1. General Information	149
2. Table of Amendments	150
3. Explanatory Details	168

Version No. 183
Evidence (Miscellaneous Provisions) Act
1958

No. 6246 of 1958

Version incorporating amendments as at
15 October 2014

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
(Miscellaneous Provisions) 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),
69/2009 s. 3.

* * * * *

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

3 Definitions

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

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

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

- (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;

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;

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

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;

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).

s. 3

S. 3(1) def. of *legal practitioner* 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 proceeding* amended by No. 67/2014 s. 147(Sch. 2 item 16.1).

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 including a Royal Commission or Board of Inquiry under the **Inquiries Act 2014**;

S. 3(1) def. of *person acting judicially* amended by Nos 57/1989 s. 3(Sch. item 67.2), 24/2008 s. 78(1).

person acting judicially includes any court judge arbitrator Associate Judge 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 *police officer* inserted by No. 37/2014 s. 10(Sch. item 59.1).

police officer has the same meaning as in the **Victoria Police Act 2013**;

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.

S. 3(2) substituted by No. 7/2010 s. 7.

- (2) A reference in this Act to a document includes a reference to—
- (a) any part of the document; or

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part I—The Means of Obtaining Evidence

s. 3

-
- (b) any copy, reproduction or duplicate of the document or of any part of the document; or
 - (c) any part of such a copy, reproduction or duplicate.
-

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.
-

s. 6

- (7) 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. 5
substituted by
No. 57/1990
s. 4,
amended by
No. 68/2009
s. 97(Sch.
item 54.1),
repealed by
No. 69/2009
s. 4.

* * * * *

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.

* * * * *

Division 1A—Examination of witnesses abroad

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.

9A Definitions

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

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.

s. 9B

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

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.
- (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.

s. 9C

-
- (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
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.

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 accused.

S. 9D substituted by No. 57/1990 s. 5, amended by No. 68/2009 s. 97(Sch. item 54.2).

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.

s. 9G

S. 9G
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;

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.
- (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

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 accused.

S. 9J
inserted by
No. 57/1990
s. 5,
amended by
No. 68/2009
s. 97(Sch.
item 54.3).

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 courts¹

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.

* * * * *

Pt 1 Div. 2
(Heading and
ss 10, 11)
amended by
Nos 57/1989
s. 3(Sch.
item 67.6),
64/1990 s. 17,
repealed by
No. 69/2009
s. 5.

Division 3—Prisoners

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

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 before², 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.

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),
77/2008
s. 129(Sch. 2
item 9.1).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part I—The Means of Obtaining Evidence

s. 12

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 2008** relating to the attendance of prisoners at inquests.

Pt 1 Div. 4
(Heading and
s. 13)
amended by
Nos 7840
s. 20(b),
110/1986
s. 140(2),
repealed by
No. 69/2009
s. 6.

* * * * *

Pt 1 Div. 5
(Heading and
ss 14–21)
amended by
Nos 7933 s. 2,
8190 s. 2(1),
9554
s. 2(2)(Sch. 2
items 66, 67),
110/1986
s. 140(2),
31/1994
s. 3(Sch. 1
item 25),
80/1998 s. 6,
77/2008
s. 129(Sch. 2
item 9.2),
7/2010 s. 8,
43/2012
s. 3(Sch.
item 17.1),
52/2012 s. 14,
37/2014
s. 10(Sch.
items 59.2,
59.3),
repealed by
No. 67/2014
s. 147(Sch. 2
item 16.2).

* * * * *

**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

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);

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part I—The Means of Obtaining Evidence

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

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

(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).

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

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).

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

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

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

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

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.

Division 8—Dispute settlement centres³

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.

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.

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 dispute settlement centres and does not disclose the identity of any person without his or her consent; or
- (f) is made by a person who reasonably considers that it is necessary to disclose the information or document for the purpose of preventing or minimising injury or damage to any person or property.

Penalty: 20 penalty units.

* * * * *

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

S. 21M(1)(e) amended by No. 53/2010 s. 223(1).

S. 21M(2) inserted by No. 57/1990 s. 8(2), repealed by No. 53/2010 s. 223(2).

s. 21N

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

* * * * *

Pt 2 Div. 1
(Heading and
ss 22–25)
amended by
Nos 6758 s. 2,
9230 s. 4,
9576 s. 11(1),
10074 s. 5,
37/1986 s. 4,
8/1991 ss 8, 9,
12/1993 s. 3,
2/2006
ss 25, 26,
repealed by
No. 69/2009
s. 7.

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

* * * * *

S. 26
amended by
No. 9230 s. 5,
repealed by
No. 69/2009
s. 8(1).

* * * * *

S. 27
amended by
No. 9230 s. 6,
repealed by
No. 69/2009
s. 8(1).

28 Confessions to doctors

Nos 3674
s. 28, 5183
s. 7.

S. 28
(Heading)
inserted by
No. 69/2009
s. 8(2).

* * * * *

S. 28(1)
amended by
No. 7418
s. 2(a),
repealed by
No. 69/2009
s. 8(3).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part II—Witnesses

s. 28

S. 28(2)
amended by
Nos 7418
s. 2(b), 10074
s. 6(a),
83/1987 s. 105,
67/2013
s. 649(Sch. 9
item 18(a)).

(2) No physician or surgeon shall without the consent of his patient divulge in any civil suit action or proceeding any information which he has acquired in attending the patient and which was necessary to enable him to prescribe or act for the patient.

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

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

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

(4) 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—

S. 28(5)(b)
amended by
Nos 10191
s. 276, 67/2013
s. 649(Sch. 9
item 18(b)).

- (a) an action brought under Part III of the **Wrongs Act 1958** to recover damages for the death of the patient;
- (b) proceedings brought under the **Workers Compensation Act 1958** or the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** 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.

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part II—Witnesses

s. 32AB

*	*	*	*	*	S. 29 amended by No. 9576 s. 11(1), repealed by No. 69/2009 s. 8(4).
*	*	*	*	*	S. 30 repealed by No. 67/2014 s. 147(Sch. 2 item 16.3).
*	*	*	*	*	Ss 31, 32 repealed by No. 69/2009 s. 8(5).
*	*	*	*	*	S. 32A inserted by No. 110/1986 s. 133, repealed by No. 69/2009 s. 8(5).

Division 2A—Confidential communications

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

32AB Guiding principles

It is the intention of Parliament that in interpreting and applying 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—

S. 32AB
inserted by
No. 2/2006
s. 27,
amended by
Nos 68/2009
s. 97(Sch.
item 54.4),
52/2012 s. 15.

- (a) there is a high incidence of sexual violence within society; and
- (b) sexual offences are significantly under-reported; and

s. 32B

- (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.

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

32B Definitions

- (1) In this Division—

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

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

harm includes actual physical bodily harm, financial loss, stress, shock, damage to reputation and emotional or psychological harm (such as shame, humiliation or fear);

protected confider means a person who made a confidential communication;

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

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

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

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 32B(1)
def. of
registered medical practitioner
amended by
No. 97/2005
s. 182(Sch. 4
item 19.1),
substituted by
No. 13/2010
s. 51(Sch.
item 22.1).

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

32C Exclusion of evidence of confidential communications

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

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).

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

- (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.
- (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).

32D Restriction on granting leave

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

- (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

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).

s. 32D

-
- 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 outweighed by the public interest in admitting, into evidence, evidence of substantial probative value.

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

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

32E Limitations on privilege

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

- (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

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

s. 32E

-
- (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 medical practitioner or counsellor, as the case requires; or
- (c) make such orders relating to disclosure of protected identity information as, in the opinion of the court, are necessary to protect the safety or welfare of the protected confider or the safety of the registered medical practitioner or counsellor, as the case requires.

32G Operation of Division

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

(1) Nothing in this Division affects the operation of—

- (a) section 28; or
- (ba) section 41, 103 or 127 of the **Evidence Act 2008**; or

S. 32G(1)(a)
amended by
Nos 68/2009
s. 97(Sch.
item 54.5),
69/2009
s. 8(6)(a).

S. 32G(1)(ba)
inserted by
No. 69/2009
s. 8(6)(b).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part II—Witnesses

s. 32G

S. 32G(1)(b)
amended by
Nos 68/2009
s. 97(Sch.
item 54.6),
65/2011
s. 107(Sch.
item 5).

(b) Division 1C of Part 3 of the **Sentencing Act 1991**; or

S. 32G(1)(c)
inserted by
No. 68/2009
s. 97(Sch.
item 54.7).

(c) Part 8.2 of the **Criminal Procedure Act 2009**.

(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.

Pt 2 Div. 3
(Heading)
repealed by
No. 43/2012
s. 3(Sch.
item 17.2).

* * * * *

Note to
Pt 2 Div. 3
inserted by
No. 2/2006
s. 32,
repealed by
No. 43/2012
s. 3(Sch.
item 17.3).

* * * * *

Ss 33–37
repealed by
No. 69/2009
s. 9.

* * * * *

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part II—Witnesses

s. 37A

* * * * *

S. 37A
inserted by
No. 8950 s. 3,
amended by
Nos 9509
s. 10, 16/1986
s. 30, 57/1989
s. 3(Sch. item
67.9), 8/1991
s. 10, 81/1991
ss 4, 81/1997
s. 9, 92/2000
s. 13, 2/2006
s. 33(1)–(5),
repealed by
No. 68/2009
s. 97(Sch.
item 54.8).

* * * * *

S. 37B
inserted by
No. 8/1991
s. 11(1),
amended by
Nos 20/2004
s. 8(1), 2/2006
s. 33(6),
18/2008 s. 9,
repealed by
No. 68/2009
s. 97(Sch.
item 54.9).

* * * * *

S. 37C
inserted by
No. 8/1991
s. 11(1A) (as
amended by
No. 81/1991
s. 7),
amended by
Nos 81/1991
s. 5, 33/1994
s. 17(2),
35/1996
s. 453(Sch. 1
item 29.2),
81/1997 s. 10,
20/2004
s. 8(2), 2/2006
s. 34, 76/2006
s. 5, 52/2008
s. 243,
repealed by
No. 68/2009
s. 97(Sch.
item 54.10).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part II—Witnesses

s. 37CAA

S. 37CAA
inserted by
No. 76/2006
s. 6,
repealed by
No. 68/2009
s. 97(Sch.
item 54.11).

* * * * *

S. 37CA
inserted by
No. 2/2006
s. 35,
amended by
No. 52/2008
s. 244,
repealed by
No. 68/2009
s. 97(Sch.
item 54.12).

* * * * *

S. 37D
inserted by
No. 102/1994
s. 94,
amended by
No. 2/2006
s. 36,
repealed by
No. 68/2009
s. 97(Sch.
item 54.13).

* * * * *

S. 37E
inserted by
No. 2/2006
s. 37,
repealed by
No. 68/2009
s. 97(Sch.
item 54.14).

* * * * *

Ss 38–41
repealed by
No. 69/2009
s. 9.

* * * * *

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part II—Witnesses

s. 41A

*	*	*	*	*	Pt 2 Div. 3AA (Heading and ss 41A–41H) inserted by No. 2/2006 s. 38, amended by Nos 76/2006 s. 7, 18/2008 ss 10–12, repealed by No. 68/2009 s. 97(Sch. item 54.15)⁴.
*	*	*	*	*	S. 42 repealed by No. 8228 s. 2(2)(a).
*	*	*	*	*	Pt 2 Div. 3A (Heading and new s. 42) inserted by No. 15/2005 s. 9, repealed by No. 68/2009 s. 97(Sch. item 54.16).
*	*	*	*	*	Pt 2 Div. 4 (Heading and ss 42A, 42B) inserted by No. 60/1993 s. 24, repealed by No. 69/2009 s. 11.

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

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

(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;

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;

s. 42BA

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 police officer;
- (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**;

* * * * *

S. 42BA(1)
def. of *law enforcement officer*
amended by
No. 37/2014
s. 10(Sch.
item 59.4(a)).

S. 42BA(1)
def. of *member*
repealed by
No. 37/2014
s. 10(Sch.
item 59.4(b)).

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 **Victoria Police Act 2013**; or
- (b) a law of another jurisdiction that corresponds to the **Victoria Police Act 2013**; 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 **Victoria Police Act 2013**;

S. 42BA(1)
def. of
**professional
misconduct**
amended by
No. 37/2014
s. 10(Sch.
item 59.4(c)).

this jurisdiction means Victoria;

Victoria Police has the same meaning as in the **Victoria Police Act 2013**;

S. 42BA(1)
def. of **Victoria
Police**
substituted by
No. 37/2014
s. 10(Sch.
item 59.4(d)).

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) the prosecution of the offence is discontinued;

 - (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.

S. 42BA(2)
(a)(v)
substituted by
No. 68/2009
s. 97(Sch.
item 54.17).

-
- (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

42BB Giving witness identity protection certificate

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

- (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.

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

42BC Statutory declaration by local operative

- (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
- (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.

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

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

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

(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.

42BE Protection of decision to give certificate

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

(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.

42BF Cancellation of witness identity protection certificate

S. 42BF
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 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.

s. 42BG

-
- (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.

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

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

- (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.

42BH Disclosure offences

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

- (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.

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

42BI Reports about witness identity protection certificates

- (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.

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 19 of the **Victoria Police Act 2013**.
- (4) In this section—
senior officer means—
 - (a) in relation to Victoria Police—a Deputy Commissioner;

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

S. 42BJ(3)
amended by
No. 37/2014
s. 10(Sch.
item 59.5).

-
- (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

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

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. 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.

42BM Effect of interstate witness identity protection certificate

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

- (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
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.

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

S. 42BO
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) 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.

42BQ Suppression and protection orders

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

- (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

s. 42BR

(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.

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

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 accused or another party to the proceeding, because—

(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. 42BR(2)
amended by
No. 68/2009
s. 97(Sch.
item 54.18).

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

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

-
- (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.

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part IIAA—Witness Identity Protection

s. 42BS

- (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.
-

PART IIA—USE OF AUDIO VISUAL AND AUDIO LINKS⁵

Division 1—Definitions

42C Definitions

In this Part—

accused has the same meaning as in the **Criminal Procedure Act 2009**;

appear includes attend;

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;

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

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

S. 42C def. of
accused
person
substituted as
accused by
No. 68/2009
s. 97(Sch.
item 54.19(a)).

S. 42C def. of
appear
inserted by
No. 68/2009
s. 97(Sch.
item 54.19(d)).

s. 42C

S. 42C def. of
child
amended by
Nos 72/2004
s. 41, 48/2006
s. 42(Sch.
item 13.2),
68/2009
s. 97(Sch.
item 54.19(b)).

child means—

- (a) in the case of a person who—
- (i) has been taken into custody for an offence and is required to be brought before the Children's Court; or
 - (ii) is a party to a proceeding in the Children's Court; or
 - (iii) is the subject of an application made to, or order made by, the Children's Court—

a person who is a child within the meaning of the **Children, Youth and Families Act 2005**; and

- (b) a person in respect of whom a sentence 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—

is located;

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

S. 42C def. of *remote point* amended by No. 68/2009 s. 97(Sch. item 54.19(c)).

Division 2—Persons other than accused

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 in a proceeding to which Division 3 applies.

S. 42D inserted by No. 4/1997 s. 3, amended by No. 68/2009 s. 97(Sch. item 54.20).

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.

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

s. 42F

- (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).

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

42F Special provisions applicable to certain proceedings involving children

- (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.
- (7) A court must not make a direction under section 42E(1) that a child appear before, or give evidence or make a submission to, the court by audio link.
- (8) Section 42E has effect in relation to a child as if the child were a party to the proceeding.

S. 42F(6)
amended by
No. 68/2009
s. 97(Sch.
item 54.21).

s. 42G

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

42G Technical requirements

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

-
- (2) The technical requirements for an audio link are as follows:
- (a) both the court point and the remote point are equipped with facilities that—
 - (i) enable all appropriate persons at the court point to hear the person appearing before the court or giving the evidence or making the submission; and
 - (ii) enable all appropriate persons at the remote point to hear appropriate persons at the court point; and
 - (b) any requirements prescribed by rules of court for or with respect to—
 - (i) the form of audio link;
 - (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.

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.

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

s. 42I

- (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.

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

42I Certain other laws not affected

S. 42I(1)
amended by
No. 68/2009
s. 97(Sch.
item 54.22).

- (1) Nothing in this Division limits the application of Part 8.2 of Chapter 8 of the **Criminal Procedure Act 2009** to a proceeding.

S. 42I(2)
amended by
No. 68/2009
s. 97(Sch.
item 54.22).

- (2) Nothing in Part 8.2 of Chapter 8 of the **Criminal Procedure Act 2009** limits the application of this Division to a proceeding.

Pt 2A Div. 3
(Heading)
amended by
No. 68/2009
s. 97(Sch.
item 54.23).

Division 3—Appearance by the accused

S. 42J
inserted by
No. 4/1997
s. 3,
amended by
No. 68/2009
s. 97(Sch.
item 54.24).

42J Application of Division

This Division applies to the appearance before a court of an accused in a criminal proceeding including a proceeding associated with, or ancillary to, or in consequence of, the prosecution for the offence⁶.

42K Appearance of adult accused before court

S. 42K
(Heading)
inserted by
No. 68/2009
s. 97(Sch.
item 54.25).
S. 42K
inserted by
No. 4/1997
s. 3.

- (1) Unless the court otherwise directs, an accused, 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
 - (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.

S. 42K(1)
amended by
No. 68/2009
s. 97(Sch.
item 54.26).

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

- (2) Unless the court otherwise directs, an accused, 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

S. 42K(2)
amended by
No. 68/2009
s. 97(Sch.
item 54.27).

s. 42L

S. 42K(2)(c)
amended by
No. 68/2009
s. 97(Sch.
item 54.27).

(c) on the trial (apart from the arraignment of the accused) 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.

S. 42K(3)
amended by
No. 68/2009
s. 97(Sch.
item 54.28).

(3) An accused, 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.

S. 42K(4)
amended by
No. 68/2009
s. 97(Sch.
item 54.29).

(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, other than a child, appear before it by audio visual link if it is satisfied that appearance by audio visual link is consistent with the interests of justice.

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

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

S. 42L(1)
amended by
No. 68/2009
s. 97(Sch.
item 54.30).

(1) A court may direct that an accused 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 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 or the prosecution at any time up to 3 days before the day on which the accused is due to appear or any shorter period before that day that is fixed by the court because of the existence of a good and sufficient reason.
- (3) An application is made by filing with the court a notice in the form (if any) prescribed by rules of court and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of court.
- (4) An application is to be determined by the court on the basis of the written application and any written submissions on the application filed with the court by any other party without giving the applicant or any other party an opportunity to be heard.
- (5) With leave of the court, an application for a direction referred to in subsection (1) may be made by or on behalf of the accused 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).

S. 42L(1)(b)
amended by
No. 68/2009
s. 97(Sch.
item 54.30).

S. 42L(2)
amended by
No. 68/2009
s. 97(Sch.
item 54.31).

S. 42L(5)
amended by
No. 68/2009
s. 97(Sch.
item 54.32).

s. 42M

- (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

S. 42M(1)
amended by
No. 68/2009
s. 97(Sch.
item 54.33).

- (1) A court may direct that an accused 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 or the prosecution at any time up to 14 days before the day on which the accused 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.

S. 42M(3)
amended by
No. 68/2009
s. 97(Sch.
item 54.34).

-
- (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 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) Any victim of the offence which the accused 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. 42M(5)
amended by
No. 68/2009
s. 97(Sch.
item 54.35).

S. 42M(8)
amended by
No. 68/2009
s. 97(Sch.
item 54.35).

s. 42N

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

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

S. 42N(1)
amended by
No. 68/2009
s. 97(Sch.
item 54.36).

S. 42N(3)
amended by
No. 68/2009
s. 97(Sch.
item 54.37).

- (1) An application for a direction referred to in section 42K(4) may be made by or on behalf of the accused or the prosecution at any time up to 14 days before the day on which the accused 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 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 accused who is a child

Unless the court otherwise directs, an accused 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.

S. 42O
(Heading)
inserted by
No. 68/2009
s. 97(Sch.
item 54.38).
S. 42O
inserted by
No. 4/1997
s. 3,
amended by
No. 68/2009
s. 97(Sch.
item 54.39).

42P Making of direction for audio visual appearance by child

- (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.

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

-
- (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

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

- (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, means the Chief Magistrate;
 - (d) in relation to the Children's Court, means the President.

S. 42Q(2)(c)
substituted by
No. 68/2009
s. 97(Sch.
item 54.40).

S. 42Q(2)(d)
inserted by
No. 68/2009
s. 97(Sch.
item 54.40).

42R Requirements for audio visual appearance by accused

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

- (1) An accused 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

S. 42R(1)
amended by
No. 68/2009
s. 97(Sch.
item 54.41).

s. 42S

(b) in subsection (3)—

are met.

S. 42R(2)
amended by
No. 68/2009
s. 97(Sch.
item 54.42).

(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 entering a plea to a charge.

S. 42R(3)
amended by
No. 68/2009
s. 97(Sch.
item 54.43).

(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 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,
amended by
No. 68/2009
s. 97(Sch.
item 54.44).

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 and his or her legal representative in accordance with this Part is as confidential and as inadmissible in any proceeding as it would be if the communication took place or the document was produced while they were in each other's presence.

S. 42T
inserted by
No. 4/1997
s. 3,
amended by
Nos 21/1999
s. 40, 68/2009
s. 97(Sch.
item 54.45).

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 and his or her legal representative in accordance with this Part as if—

- (a) the communication were a private conversation within the meaning of that Act to which the parties were the accused 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 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.

S. 42T(a)
amended by
No. 68/2009
s. 97(Sch.
item 54.45).

S. 42T(b)
amended by
No. 68/2009
s. 97(Sch.
item 54.45).

Division 4—General

42U Putting documents to a remote person

- (1) If in the course of the examination of a person by audio visual link or audio link it is necessary to put a document to him or her, the presiding judge or magistrate may permit the document to be put to the person—
 - (a) if the document is at the court point, by transmitting a copy of it to the remote point by any means and the copy so transmitted being then put to the person; or
 - (b) if the document is at the remote point, by putting it to the person and then transmitting a copy of it to the court point by any means.
- (2) A document put to a person in accordance with subsection (1) is admissible in evidence without proof that the transmitted copy is a true copy of the relevant document.

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

s. 42V

- (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,
amended by
No. 68/2009
s. 97(Sch.
item 54.46).

42V Direction to jury in criminal trial

If a court makes a direction under section 42E(1) in a criminal trial or an accused 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 or give any evidence given by the witness or the accused 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.

S. 42X
inserted by
No. 4/1997
s. 3,
amended by
No. 68/2009
s. 97(Sch.
item 54.47).

42X Arraignment

An accused 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.

42Y Administration of oaths and affirmations

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

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

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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

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**

Pt 3 Div. 1
(Heading and
ss 43–47)
amended by
No. 8228
s. 2(2)(b)(c),
repealed by
No. 69/2009
s. 12.

* * * * *

Pt 3 Div. 2
(Heading and
ss 48–52)
repealed by
No. 69/2009
s. 13.

* * * * *

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

Division 2A—Reproductions of documents

S. 53
substituted by
No. 7324 s. 3,
amended by
No. 8228
s. 2(2)(d),
repealed by
No. 69/2009
s. 14(1).

* * * * *

S. 53A
inserted by
No. 7324 s. 3,
amended by
Nos 8787
s. 33(a), 9713
s. 55(a)(b),
10074 s. 7,
10231 s. 6,
57/1989
s. 3(Sch.
item 67.10),
46/1998
s. 7(Sch. 1),
repealed by
No. 69/2009
s. 14(1).

* * * * *

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

s. 53B

* * * * *

S. 53B
inserted by
No. 7324 s. 3,
repealed by
No. 69/2009
s. 14(1).

* * * * *

Ss 53C–53F
inserted by
No. 7324 s. 3,
repealed by
No. 69/2009
s. 14(1).

* * * * *

S. 53G
inserted by
No. 7324 s. 3,
amended by
No. 57/1989
s. 3(Sch.
item 67.11),
repealed by
No. 69/2009
s. 14(1).

* * * * *

S. 53H
inserted by
No. 7324 s. 3,
repealed by
No. 69/2009
s. 14(1).

* * * * *

S. 53J
inserted by
No. 7324 s. 3,
amended by
Nos 9699
s. 23, 12/1989
s. 4(1)(Sch. 2
item 41.1),
11/2001
s. 3(Sch.
item 25.2),
44/2001
s. 3(Sch.
item 40.1),
repealed by
No. 69/2009
s. 14(1).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

s. 53Q

Ss 53K–53P
inserted by
No. 7324 s. 3,
repealed by
No. 69/2009
s. 14(1).

* * * * *

S. 53Q
inserted by
No. 7324 s. 3,
amended by
No. 69/2009
s. 14(2).

**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 (as in force immediately before its repeal) together with an affidavit or declaration in accordance with subsection (4) of the said section (as in force immediately before its repeal) referring to the negative.

Ss 53R–53T
inserted by
No. 7324 s. 3,
repealed by
No. 69/2009
s. 14(1).

* * * * *

Evidence (Miscellaneous Provisions) Act 1958

No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

s. 54

* * * * *

**Pt 3 Div. 3
(Heading and
ss 54–58)
amended by
Nos 6505 s. 2,
8181 s. 2(1)
(Sch. item 44),
8228 s. 3,
9576 s. 11(1),
51/1989
s. 144(2)(a),
23/1994 s. 118
(Sch. 1 item
20.1), 35/1996
s. 453(Sch. 1
item 29.3),
35/1999 s. 35,
97/2005
s. 182(Sch. 4
item 19.2),
77/2008
s. 129(Sch. 2
item 9.3),
7/2009
s. 435(7) (as
amended by
No. 68/2009
s. 54(u)),
repealed by
No. 69/2009
s. 15.**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

s. 59

Pt 3 Div. 3A
(Heading and
ss 58A–58J)
inserted by
No. 8228 s. 4,
amended by
Nos 10231
s. 7, 16/1986
s. 30, 110/1986
s. 140(2),
29/1988
s. 57(6),
19/1989
s. 16(Sch.
item 21.1),
57/1989
s. 3(Sch.
items 67.12–
67.14),
94/1990
s. 40(5),
11/2001
s. 3(Sch.
item 25.3),
repealed by
No. 69/2009
s. 16.

* * * * *

**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.

* * * * *

Ss 60–66
repealed by
No. 69/2009
s. 17.

* * * * *

S. 67
amended by
Nos 8228
s. 2(2)(e)(f),
10074 s. 8,
repealed by
No. 69/2009
s. 17.

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

s. 70

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),
repealed by
No. 69/2009
s. 17.

* * * * *

S. 69
amended by
No. 8565
s. 24(9),
substituted by
No. 8787
s. 33(b),
amended by
Nos 9698
s. 14(6), 9699
s. 23, 44/2001
s. 3(Sch.
item 40.3),
repealed by
No. 69/2009
s. 17.

* * * * *

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

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

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

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.

* * * * *

S. 72
amended by
No. 7228
s. 7(Sch. 4
Pt 9(c)),
substituted by
No. 10231 s. 8,
amended by
No. 57/1989
s. 3(Sch.
item 67.16),
repealed by
No. 69/2009
s. 18.

* * * * *

S. 73
repealed by
No. 69/2009
s. 18.

74 Evidence of contents of will

The probate of a will or codicil or letters of administration with the will or codicil annexed (obtained or having operation in Victoria) is evidence of the contents of the will or codicil.

No. 3674 s. 67.
S. 74
substituted by
No. 69/2009
s. 19.

Evidence (Miscellaneous Provisions) Act 1958

No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

s. 75

S. 75
amended by
Nos 9019
s. 2(1)(Sch.
item 64),
57/1989
s. 3(Sch.
item 67.17),
repealed by
No. 69/2009
s. 18.

* * * * *

Pt 3 Div. 5A
(Heading and
s. 75A)
inserted by
No. 8003
s. 2(1),
amended by
Nos 9902
s. 2(1)(Sch.
item 83),
10257
s. 84(b)(c),
127/1986
s. 102(Sch. 4
item 9),
57/1989
s. 3(Sch. item
67.18),
repealed by
No. 69/2009
s. 20.

* * * * *

Division 6—Judicial notice

Ss 76–78
repealed by
No. 69/2009
s. 21.

* * * * *

* * * * *

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,
amended by
Nos 10231
s. 9, 57/1989
s. 3(Sch.
item 67.19),
46/1998
s. 7(Sch. 1),
repealed by
No. 69/2009
s. 21 .

80 Judicial notice of certain seals etc

No. 3674 s. 73.
S. 80
substituted by
No. 69/2009
s. 22.

If it is provided by a subordinate instrument that a court or person acting judicially must or may take judicial notice of any seal, stamp, signature or any other matter or thing, then the court or person acting judicially must or may take judicial or official notice of the seal, stamp, signature or other matter or thing.

81 Effect of judicial or official notice

No. 3674 s. 74.
S. 81
substituted by
No. 69/2009
s. 22.

If a court or person acting judicially takes judicial or official notice, under section 80, of a seal or signature attached or appended to a document, the court or person must presume—

- (a) that the 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
- (b) that there was jurisdiction or authority to sign or seal the document at that time and place; and

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Part III—Proof of Documents, Proof of Facts by Documents and Document
Unavailability

s. 81

- (c) that the document is what, on its construction, it purports to be; and
- (d) that the document is a valid and subsisting document.

Pt 3 Div. 7
(Heading and
ss 82–86)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
items 41.2,
41.3), 57/1989
s. 3(Sch.
items 67.20,
67.21),
78/1991 s. 26,
125/1993
s. 20(4)(a),
repealed by
No. 69/2009
s. 23.

* * * * *

Pt 3 Div. 8
(Heading and
ss 87–89)
amended by
Nos 9019
s. 2(1)(Sch.
item 66), 9059
s. 2(1)(Sch.
item 15),
10084 s. 25,
57/1989
s. 3(Sch.
items 67.22,
67.23),
43/1994
s. 56(Sch.
item 2),
repealed by
No. 69/2009
s. 24.

* * * * *

Division 9—Document unavailability

Pt 3 Div. 9
(Heading and
ss 90–98),
repealed,
new Pt 3
Div. 9
(Heading and
ss 89A–89E)
inserted by
No. 53/2006
s. 4.

89A Meaning of unavailability of document

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

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.

s. 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
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.

89E Operation of Public Records Act 1973

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

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

89F Division to be in addition to Evidence Act 2008

This Division applies in relation to any civil proceeding in addition to any provision of the **Evidence Act 2008** that applies in relation to that proceeding.

S. 89F
inserted by
No. 69/2009
s. 25.

* * * * *

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

* * * * *

Pt 3A
(Heading and
ss 90, 91)
inserted by
No. 74/1993
s. 3,
amended by
No. 75/2005
s. 49(Sch. 4
item 1),
repealed by
No. 69/2009
s. 26.

**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.

Pt 4 Div. 2
(Heading and
ss 100–104)
amended by
Nos 7651 s. 2,
10074 s. 10,
57/1989
s. 3(Sch.
item 67.24),
substituted by
No. 69/2009
s. 27.

Division 2—Oaths and affirmations

S. 100
substituted by
No. 69/2009
s. 27.

100 Application of Division

This Division does not apply to an oath or affirmation made by a witness in a proceeding or by a person acting as an interpreter in a proceeding to which the **Evidence Act 2008** applies.

S. 101
substituted by
No. 69/2009
s. 27.

101 Manner of administration of oaths and affirmations

- (1) A person may take an oath, or make an affirmation in accordance with the appropriate form set out in Part 1 of the Third Schedule or in a similar form.
- (2) Such an affirmation has the same effect for all purposes as an oath.
- (3) An oath or affirmation may be administered to and taken, or made, by 2 or more persons at the same time.

102 Choice of oath or affirmation

S. 102
substituted by
No. 69/2009
s. 27.

- (1) A person who is required to take an oath may choose whether to take an oath or to make an affirmation.
- (2) The officer administering the oath or affirmation is to inform the person that he or she has this choice, unless the officer is satisfied that the person has already been informed or knows that he or she has the choice.
- (3) The officer administering the oath or affirmation may direct the person to make an affirmation if—
 - (a) the person refuses to choose whether to take an oath or make an affirmation; or
 - (b) it is not reasonably practicable for the person to take an appropriate oath.
- (4) In this Division—

officer includes any person duly authorised to administer oaths and any person administering oaths under the direction of any court or any person acting judicially.

103 Requirements for oaths

S. 103
substituted by
No. 69/2009
s. 27.

- (1) It is not necessary that a religious text be used in taking an oath.
- (2) An oath is effective even if the person who took it did not have a religious belief or did not have a religious belief of a particular kind.

104 Affirmations in writing

S. 104
substituted by
No. 69/2009
s. 27.

An affirmation in writing must commence and use the form in lieu of jurat set out in Part 2 of the Third Schedule.

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

- (1) A statutory declaration must—
 - (a) contain an acknowledgement that it is true and correct and is made in the belief that a person making a false declaration is liable to the penalties of perjury; and
 - (b) be signed by the person making it in the presence of a person who is authorised under section 107A(1) to witness the signing of a statutory declaration.
- (2) A person who makes a declaration which the person knows to be false is liable to the penalties of perjury.

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).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part IV—Oaths Affirmations Affidavits Declarations

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;

S. 107A(1)(e)
substituted by
No. 55/2014
s. 172(a).

(e) the prothonotary or a deputy prothonotary of
the Supreme Court, the registrar or a deputy
registrar of the County Court, the principal
registrar or a registrar or deputy registrar of
the Magistrates' Court or the principal
registrar or a registrar or deputy registrar of
the Children's 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;

S. 107A(1)(h)
substituted by
No. 24/2008
s. 78(2).

(h) the associate of an Associate Judge of the
Supreme Court or of an associate judge 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;

S. 107A(1)(j)
amended by
No. 37/2014
s. 10(Sch.
item 59.6).

(j) a police officer;

(k) the sheriff or a deputy sheriff;

(l) a member or former member of either House
of the Parliament of Victoria;

(m) a member or former member of either House
of the Parliament of the Commonwealth;

-
- (n) a councillor of a municipality;
- (o) a senior officer of a Council as defined in the **Local Government Act 1989**;
- (p) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);
- (q) a person registered under the Health Practitioner Regulation National Law—
- (i) to practise in the dental profession as a dentist (other than as a student); and
- (ii) in the dentists division of that profession;
- (r) a registered veterinary practitioner within the meaning of the **Veterinary Practice Act 1997**;
- (s) a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);
- (t) a principal within the meaning of the **Education and Training Reform Act 2006**;
- S. 107A(1)(o) substituted by No. 125/1993 s. 20(4)(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), substituted by No. 13/2010 s. 51(Sch. item 22.2(a)).
- 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), substituted by No. 13/2010 s. 51(Sch. item 22.2(a)).
- S. 107A(1)(r) amended by No. 58/1997 s. 96(Sch. item 4), substituted by No. 55/2014 s. 172(b).
- S. 107A(1)(s) substituted by No. 13/2010 s. 51(Sch. item 22.2(b)).
- S. 107A(1)(t) substituted by No. 55/2014 s. 172(c).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part IV—Oaths Affirmations Affidavits Declarations

s. 107A

-
- | | |
|---|--|
| <p>S. 107A(1)(u)
amended by
No. 11/2001
s. 3(Sch.
item 25.4).</p> | <p>(u) the manager of an authorised deposit-taking institution;</p> |
| <p>S. 107A(1)(v)
amended by
No. 36/2011
s. 36,
substituted by
No. 55/2014
s. 172(d).</p> | <p>(v) a person who holds a prescribed membership of a prescribed accounting body or association;</p> <p>(w) the secretary of a building society;</p> <p>(x) a minister of religion authorised to celebrate marriages;</p> |
| <p>S. 107A(1)(xa)
inserted by
No. 19/2012
s. 22.</p> | <p>(xa) a Victorian Inspectorate Officer within the meaning of the Victorian Inspectorate Act 2011;</p> |
| <p>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).</p> | <p>(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;</p> |
| <p>S. 107A(1)(ya)
inserted by
No. 28/2012
s. 35.</p> | <p>(ya) an IBAC Officer within the meaning of the Independent Broad-based Anti-corruption Commission Act 2011;</p> <p>(z) a fellow of the Institute of Legal Executives (Victoria).</p> |
- (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—

(a) acting for any of the parties to the proceeding or matter in respect of which the declaration is made; or

S. 107A(2)(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.4(a)).

(b) a clerk to a person so acting.

S. 107A(2)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 29.4(b)).

(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

No. 3674
s. 101.
S. 108
amended by
No. 51/1989
s. 144(2)(f).

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.

109 Name and address of person witnessing declaration to appear on declaration

No. 3674
s. 102.
S. 109
substituted by
No. 51/1989
s. 144(2)(g).

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.

s. 110

Division 5—Courts and officers

No. 3674
s. 103.

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.

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

* * * * *

No. 3674
s. 104.

111 Power of certain officers of courts etc. to administer oaths

S. 111
amended by
No. 51/1989
s. 144(2)(i).

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).

- (4) In this section *authority* means any court judge person or body which is authorized under the law of a place outside Victoria to take or receive evidence on oath in that place.

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

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).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part IV—Oaths Affirmations Affidavits Declarations

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

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) an Associate Judge of the Supreme Court or
the associate to such Associate Judge; | 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)),
substituted by
No. 24/2008
s. 78(3). |
| (ba) an associate judge of the County Court or the
associate to such associate judge; | S. 123C(1)(ba)
inserted by
No. 24/2008
s. 78(3). |
| (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 or a registrar or deputy registrar of
the Magistrates' Court or the principal
registrar or a registrar or deputy registrar of
the Children's Court; | S. 123C(1)(d)
substituted by
Nos 51/1989
s. 144(2)
(k)(i)(D),
55/2014 s. 173. |
| (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). |

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part IV—Oaths Affirmations Affidavits Declarations

s. 123C

-
- 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).
- (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 **Legal Profession Act 2004**, was the registrar or a deputy registrar of the Legal Profession Tribunal;
- S. 123C(1)(e)
substituted by
No. 51/1989
s. 144(2)
(k)(i)(E).
- (e) a member or former member of either House of the Parliament of Victoria;
- S. 123C(1)(ea)
inserted by
No. 51/1989
s. 144(2)
(k)(i)(E).
- (ea) a member or former member of either House of the Parliament of the Commonwealth;
- 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),
amended by
No. 37/2014
s. 10(Sch.
item 59.6).
- (ga) a police officer of or above the rank of sergeant or for the time being in charge of a police station;
-

-
- (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.
- 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).
- 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. 124

(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.

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

(3) The person before whom an affidavit is sworn or taken must legibly write, type or stamp his or her name and address below his or her own signature where it appears on the affidavit.

Penalty applying to this subsection: 1 penalty unit.

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

(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

124 Taking oaths out of Victoria

No. 3674
s. 116.
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.

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

-
- (2) In the case of a person purporting to have such authority otherwise than by the law of a foreign country not under the dominion of Her Majesty all courts and persons acting judicially shall take judicial and official notice of the seal or signature of any such person attached or appended to any such affidavit and for the purpose of this section judicial and official notice may also be taken as to what places are and what places are not under the dominion of Her Majesty.
 - (3) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of Her Majesty such authority may be verified by any of the persons mentioned in 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)(l)(iii).

No. 3674
s. 117.

125 Affidavits and declarations required to be made before a justice sufficient if made before a justice elsewhere

- (1) Where by any Act or by an order in council rule regulation or by-law made pursuant to any Act any affidavit or declaration is required or authorized or permitted to be administered or taken before a justice of the peace it shall be sufficient for all purposes if such affidavit or declaration is taken before a justice of the peace for that part of Her Majesty's dominions in which such affidavit or declaration is taken.
- (2) All courts and persons acting judicially shall take judicial and official notice of the signature of any justice of the peace in any part of Her Majesty's dominions when such signature is attached or appended to any such affidavit or declaration and the place where such signature was so attached or appended purports to be shown and for the purposes of this section judicial and official notice may be taken as to what places are under the dominion of Her Majesty.

Division 11—Jurat

126 Jurat to state where and when oath is taken⁸

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).

s. 126A

S. 126A
inserted by
No. 7660 s. 2,
amended by
No. 51/1989
s. 144(2)(n).

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.

Pt 4 Div. 12
(Heading and
s. 126B)
inserted by
No. 4/2012
s. 4.

Division 12—Miscellaneous

S. 126B
inserted by
No. 4/2012
s. 4.

126B False or misleading statement as to swearing etc. of affidavit

- (1) Subject to subsection (2), a person must not make a false or misleading statement as to—
 - (a) the circumstances in which an affidavit or a document purporting to be an affidavit was sworn or affirmed; or
 - (b) whether or not an affidavit or a document purporting to be an affidavit was sworn or affirmed—

knowing that the statement is false or misleading.

Penalty: 10 penalty units.

- (2) This section applies—
 - (a) only in relation to a statement made on or after the commencement of section 4 of the **Evidence (Miscellaneous Provisions) Amendment (Affidavits) Act 2012**; and

-
- (b) whether the affidavit or the document purporting to be an affidavit was sworn or affirmed before, on or after that commencement.
-

**PART V—ATTESTATIONS VERIFICATIONS
ACKNOWLEDGMENTS NOTARIAL ACTS ETC.**

127 Certain provisions of Part IV apply to certain attestations

No. 3674
s. 119.
S. 127
amended by
Nos 51/1989
s. 144(2)(o),
52/2001
s. 13(2)(c),
substituted by
No. 69/2009
s. 28.

- (1) Divisions 6, 9 and 10 of Part IV extend to the following—
 - (a) the taking of a recognisance of bail;
 - (b) an attestation, verification, acknowledgement or signature in relation to any document required, authorised or permitted, by or under any Act or otherwise to be attested, verified, acknowledged or signed;
 - (c) the doing of a notarial act—

subject to the modification that for words relating the administration of oaths and the taking of affidavits there should be substituted words relating the doing of the relevant act set out in paragraph (a), (b) or (c).

- (2) Subsection (1) does not apply—
 - (a) to any matter or thing that is required to be attested, verified, acknowledged or signed before a court or a judge; or
 - (b) if there is a contrary intention expressed in relation to the action.
- (3) In this section, *notarial act* includes an act of attestation or verification by a public notary in accordance with a requirement by or under an Act of Parliament or otherwise.

128 Attestations etc. before a justice

(1) If, by or under an Act of Parliament or subordinate instrument, a document is required, authorised or permitted to be attested or verified by, or acknowledged or signed before a justice of the peace, it is sufficient compliance with the requirement for a justice of the peace (or an equivalent office holder)—

(a) in another State or a Territory of the Commonwealth; or

(b) in any part of Her Majesty's dominions—
to have carried out the action.

(2) All courts and persons acting judicially must take judicial or official notice of a signature of a justice of the peace (or an equivalent office holder)—

(a) in another State or a Territory of the Commonwealth; or

(b) in any part of Her Majesty's dominions—
if the signature is attached or appended to a document and the place where the signature was so attached or appended purports to be shown.

* * * * *

No. 3674
s. 120.
S. 128
amended by
Nos 10074
s. 11(3)(b),
51/1989
s. 144(2)(p),
substituted by
No. 69/2009
s. 28.

S. 129
repealed by
No. 10074
s. 11(3)(c).

PART VI—RECORDING OF EVIDENCE

130 Power to person acting judicially to direct that evidence be recorded

No. 5877 s. 2
[122].

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.⁹

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

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.

* * * * *

No. 5877 s. 2 [129].
S. 137 amended by Nos 9156 s. 3(2)(g), 9576 s. 11(1).

Ss 138, 139 repealed.¹⁰

140 Power to Governor in Council to regulate fees

- (1) The Governor in Council may from time to time make regulations for or with respect to—

* * * * *

- (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) substituted by No. 6855 s. 3.

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.¹¹

Evidence (Miscellaneous Provisions) 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, or the **Evidence Act 2008**;
- (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, or the **Evidence Act 2008**;

S. 142(a)
amended by
No. 69/2009
s. 29(1)(a).

S. 142(b)
amended by
No. 69/2009
s. 29(1)(b).

s. 143

S. 142(c)
amended by
No. 69/2009
s. 29(1)(c).

- (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 the **Evidence Act 2008**, 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),
69/2009
s. 29(2).

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, or the **Evidence Act 2008**, 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 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),
7/2009
s. 435(7) (as
amended by
No. 68/2009
s. 54(u)).

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.

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958
Part VIII—Miscellaneous

s. 149A

PART VIII—MISCELLANEOUS

S. 146
amended by
No. 110/1986
s. 140(2),
repealed by
No. 69/2009
s. 30.

* * * * *

Ss 147–149
repealed by
No. 69/2009
s. 30.

* * * * *

S. 149A
inserted by
No. 7366 s. 6,
amended by
Nos 101/1986
s. 57, 108/1997
s. 153,
substituted by
No. 69/2009
s. 31.

149A Admissions of fact in confiscation proceedings

Subject to the express provisions of any Act, but despite any rule of law or procedure or any practice to the contrary, the accused person in any proceedings under the **Confiscation Act 1997** may make an 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 or she is of the opinion that it would be contrary to the interests of justice to do so having regard to all the circumstances of the case.

S. 149AB
inserted by
No. 60/1993
s. 25,
repealed by
No. 69/2009
s. 33.

* * * * *

Ss 149B,
149C
inserted by
No. 10231
s. 11,
repealed by
No. 69/2009
s. 33.

* * * * *

* * * * *

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, repealed by No. 69/2009 s. 33.

151 Abolition of extra-judicial oaths

No. 3674 s. 143.

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 hearing 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. 151 amended by Nos 10257 s. 84(f), 57/1989 s. 3(Sch. item 67.27(a)-(c)), 68/2009 s. 97(Sch. item 54.48).

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

s. 152

152 Regulations

S. 152

inserted by
No. 7366 s. 7,
amended by
Nos 7705
s. 10, 7876
s. 2(3),
34/1990
s. 6(a).

S. 152(1)

amended by
Nos 10257
s. 84(g),
57/1989
s. 3(Sch. item
67.28),
68/2009
s. 97(Sch.
item 54.49)¹²,
69/2009
s. 32(b),
repealed by
No. 52/2012
s. 16.

* * * * *

S. 152(2)

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

(2) The Governor in Council may make regulations
for or with respect to—

S. 152(2)(aa)

inserted by
No. 8/1991
s. 11(2),
repealed by
No. 68/2009
s. 97(Sch.
item 54.50).

* * * * *

S. 152(2)(a)

amended by
No. 46/1998
s. 7(Sch. 1).

(a) prescribing classification for the purposes of
section 107A; and

S. 152(2)(b)

amended by
No. 46/1998
s. 7(Sch. 1).

(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. 153 inserted by No. 81/1997 s. 11, repealed by No. 69/2009 s. 33.

* * * * *

S. 154 inserted by No. 21/1998 s. 5, repealed by No. 69/2009 s. 33.

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.

* * * * *

S. 156 inserted by No. 60/2004 s. 5, repealed by No. 69/2009 s. 33.

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

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

Division 3A of Part II, inserted by section 9 of the **Sentencing (Further Amendment) Act 2005**, applies to a proceeding for an offence commenced

s. 158A

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,
repealed by
No. 69/2009
s. 33.

* * * * *

S. 158
inserted by
No. 53/2006
s. 5,
repealed by
No. 69/2009
s. 33.

* * * * *

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

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

- (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.

**160 Transitional provision—Justice Legislation
Amendment (Sex Offences Procedure) Act 2008**

S. 160
inserted by
No. 18/2008
s. 13.

- (1) The amendments made to this Act by sections 9, 10 and 11 of the **Justice Legislation Amendment (Sex Offences Procedure) Act 2008** apply to a proceeding for an offence that is commenced on or after the commencement of those provisions, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
- (2) The amendments made to this Act by section 12 of the **Justice Legislation Amendment (Sex Offences Procedure) Act 2008**—
 - (a) apply to any legal proceeding that commences before or after the commencement of section 12, irrespective of when the offence to which the proceeding relates is alleged to have been committed; but
 - (b) do not apply to any legal proceeding that commenced before the commencement of section 12 if, before the commencement of section 12, the accused had been committed for trial or charged on indictment or presentment with the offence to which the proceeding relates.

s. 161

S. 161
inserted by
No. 69/2009
s. 34.

161 Transitional provision—Statute Law Amendment (Evidence Consequential Provisions) Act 2009

- (1) This Act, as amended by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, applies to any proceeding commenced on or after the day that Act commences.
- (2) In the case of any proceeding that commenced before the day the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009** commenced, this Act, as amended by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, applies to that part of the proceeding that takes place on or after that day, other than a hearing in the proceeding to which subsection (3) applies.
- (3) This Act as in force immediately before the commencement of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009** continues to apply to any hearing in a proceeding that commenced before the day that Act commenced and that—
 - (a) continues on or after that day; or
 - (b) was adjourned until that day or a day after that day.

S. 162
inserted by
No. 69/2009
s. 34.

162 Transitional provision—interpretation of references

A reference in any other Act (other than this Act) or in any instrument made under any Act or in any other document of any kind to a provision of the **Evidence Act 1958** that is not repealed by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, is to be taken to be a reference to the provision of the same number in the **Evidence (Miscellaneous Provisions) Act 1958**, so far as it applies to any period on or after the commencement of the

**Statute Law Amendment (Evidence
Consequential Provisions) Act 2009.**

**163 Transitional provision—Criminal Procedure
Act 2009**

S. 163
inserted by
No. 68/2009
s. 97(Sch.
item 54.51).

- (1) Sections 55B(5) and 144 as amended by section 435(7) of the **Criminal Procedure Act 2009** applies to an offence alleged to have been committed on or after the commencement of section 435(7) of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of section 435(7) of the **Criminal Procedure Act 2009**, the offence is alleged to have been committed before that commencement.

164 Transitional provision—Inquiries Act 2014

S. 164
inserted by
No. 7/2010
s. 9,
substituted by
No. 67/2014
s. 147(Sch. 2
item 16.4).

- (1) Division 5 of Part I, or any provision of that Division, that applied to a board or a commission referred to in that Division immediately before the commencement day continues to apply, despite its repeal, to that board or commission.
- (2) If another Act, as in force immediately before the commencement day, provided that Division 5 of Part I, or any provision of that Division, applies for the purposes of that other Act or for the purposes of an inquiry, investigation, hearing, appeal, review or other proceeding under that other Act, that Division or provision continues to apply, despite its repeal, for those purposes.
- (3) Section 30, as in force immediately before the commencement day continues to apply in relation to a board or commission that was, immediately before that repeal, empowered under the provisions of this Act to summon witnesses.

(4) In this section—

commencement day means the day on which item 16.2 of Schedule 2 to the **Inquiries Act 2014** comes into operation.

S. 165
inserted by
No. 4/2012
s. 5.

165 Validation of certain acts and documents

- (1) If an affidavit signed before 12 November 2011 by a person and by a person duly authorised to administer oaths contains words indicating that the first person states that the affidavit is made on oath or affirmation—
- (a) it is not, and was not at any time, necessary that—
- (i) the oath or affirmation be made orally; or
 - (ii) the first person signed the affidavit in the presence of the person duly authorised to administer oaths; or
 - (iii) the person duly authorised to administer oaths signed the affidavit in the presence of the first person; or
 - (iv) if the first person signed the affidavit in the presence of a person duly authorised to administer oaths, the person so authorised observed the person signing the affidavit; or
 - (v) the affidavit contained the statement required by section 126; and
- (b) the words indicating that the first person states that the affidavit was made on oath or affirmation are and are taken always to have been effective by way of oath or affirmation even if anything referred to in paragraph (a)(i) to (v) was not done or did not occur.

-
- (2) A warrant, an order, a summons or other process issued or made by a court or a judicial officer in reliance, directly or indirectly, on an affidavit referred to in subsection (1) is not invalid only by reason of the fact that, but for subsection (1), the affidavit would not have been duly sworn or affirmed.
- (3) For the purposes of the prosecution of an alleged offence, the fact that, but for subsection (1), an affidavit would not have been duly sworn or affirmed is to be disregarded in determining whether evidence obtained in reliance, directly or indirectly, on that affidavit ought to be admitted.
- (4) Subject to subsection (3), this section does not limit a discretion of a court—
- (a) to exclude evidence in a criminal proceeding; or
 - (b) to stay a criminal proceeding in the interests of justice.
- (5) This section does not affect the rights of the parties in—
- (a) the proceedings known as *Director of Public Prosecutions (Vic.) v. Marijancevic (No. 264 of 2011)*, *Director of Public Prosecutions (Vic.) v. Preece (No. 263 of 2011)* and *Director of Public Prosecutions (Vic.) v. Preece (No. 265 of 2011)* in the Supreme Court of Victoria, Court of Appeal; or
 - (b) any other proceeding in which a court, before the day on which the **Evidence (Miscellaneous Provisions) Amendment (Affidavits) Act 2012** receives the Royal Assent, has made a ruling on the validity of—
 - (i) an affidavit referred to in subsection (1); or
-

-
- (ii) a warrant, an order, a summons or a process issued or made in reliance, directly or indirectly, on an affidavit referred to in subsection (1); or
- (c) any other proceeding in which a court, before the day on which the **Evidence (Miscellaneous Provisions) Amendment (Affidavits) Act 2012** receives the Royal Assent, has made a ruling on the admissibility of evidence obtained under a warrant, an order, a summons or other process issued or made in reliance, directly or indirectly, on an affidavit that, but for subsection (1), would not have been duly sworn or affirmed.
- (6) In this section *affidavit* includes a document purporting to be an affidavit.
-

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 police officers:

It is hereby ordered under the provisions of the **Evidence (Miscellaneous Provisions) 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]]¹³ 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),
69/2009 s. 35,
37/2014
s. 10(Sch.
item 59.7).

Sch. 3

Sch. 3
substituted by
No. 69/2009
s. 36.

THIRD SCHEDULE

PART 1—FORM OF OATH AND AFFIRMATION

Form of oath

I swear (or the person taking the oath may promise) by Almighty God (or the person may name a god recognised by his or her religion) that (followed by the words of the oath prescribed or allowed by law).

Form of affirmation

I solemnly and sincerely declare and affirm that (followed by the words of the oath prescribed or allowed by law).

PART 2—AFFIRMATIONS IN WRITING

Form of commencement of written affirmation

I, (name of person making affirmation) of (address of person making affirmation), do solemnly and sincerely affirm.

Form in lieu of jurat

Affirmed at (place where affirmed), this (date affirmed) day of (month and year), before me.

* * * * *

Sch. 4
amended by
No. 7703 s. 5,
repealed by
No. 51/1989
s. 144(2)(q).

=====

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.

The title of this Act was changed from the **Evidence Act 1958** to the **Evidence (Miscellaneous Provisions) Act 1958** by section 3 of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, No. 69/2009.

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Evidence (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

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 (Miscellaneous Provisions) 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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Evidence (Unsworn Evidence) Act 1993, No. 12/1993

Assent Date: 11.5.93
Commencement Date: 11.5.93
Current State: All of Act in operation

Crimes (Criminal Trials) Act 1993, No. 60/1993

Assent Date: 8.6.93
Commencement Date: Ss 24, 25 on 1.7.93: Government Gazette 1.7.93 p. 1735
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Legal Practice (Amendment) Act 1997, No. 102/1997

Assent Date: 16.12.97
Commencement Date: S. 49(Sch. item 2) on 16.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) 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 (Miscellaneous Provisions) Act 1958**

Justice Legislation Amendment (Sex Offences Procedure) Act 2008, No. 18/2008

Assent Date: 13.5.08
Commencement Date: Ss 9–13 on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008

Assent Date: 3.6.08
Commencement Date: S. 78 on 17.12.08: Special Gazette (No. 377) 16.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Family Violence Protection Act 2008, No. 52/2008

Assent Date: 23.9.08
Commencement Date: Ss 243, 244 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

Coroners Act 2008, No. 77/2008

Assent Date: 11.12.08
Commencement Date: S. 129(Sch. 2 item 9) on 1.11.09: s. 2
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Criminal Procedure Act 2009, No. 7/2009 (as amended by No. 68/2009)

Assent Date: 10.3.09
Commencement Date: S. 435(7) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 54) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: Ss 3–36 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Crimes Legislation Amendment Act 2010, No. 7/2010

Assent Date: 16.3.10
Commencement Date: Ss 7–9 on 17.3.10: s. 2
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 22) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Personal Safety Intervention Orders Act 2010, No. 53/2010

Assent Date: 7.9.10
Commencement Date: S. 223 on 1.12.10: Government Gazette 14.10.10 p. 2405
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

Consumer Acts Amendment Act 2011, No. 36/2011

Assent Date: 23.8.11
Commencement Date: S. 36 on 24.8.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011

Assent Date: 22.11.11
Commencement Date: S. 107(Sch. item 5) on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Amendment (Affidavits) Act 2012, No. 4/2012

Assent Date: 1.3.12
Commencement Date: S. 5 on 12.11.11: s. 2(2); s. 4 on 2.3.12: s. 2(3)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Victorian Inspectorate Amendment Act 2012, No. 19/2012

Assent Date: 24.4.12
Commencement Date: S. 22 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Independent Broad-based Anti-corruption Commission Amendment (Examinations) Act 2012, No. 28/2012

Assent Date: 29.5.12
Commencement Date: S. 35 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 17.1) on 17.3.10: s. 2(2)(d); s. 3(Sch. items 17.2, 17.3) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Evidence Amendment (Journalist Privilege) Act 2012, No. 52/2012

Assent Date: 18.9.12
Commencement Date: Ss 14–16 on 1.1.13: s. 2(2)
Current State: This information relates only to the provision/s amending the **Evidence (Miscellaneous Provisions) Act 1958**

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

Endnotes

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date: 12.11.13
Commencement Date: S. 649(Sch. 9 item 18) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Evidence (Miscellaneous Provisions)
Act 1958**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014,
No. 37/2014**

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 59) on 1.7.14: Special Gazette
(No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s
amending the **Evidence (Miscellaneous Provisions)
Act 1958**

**Criminal Organisations Control and Other Acts Amendment Act 2014,
No. 55/2014**

Assent Date: 26.8.14
Commencement Date: Ss 172, 173 on 27.8.14: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Evidence (Miscellaneous Provisions)
Act 1958**

Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 16) on 15.10.14: Special Gazette
(No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s
amending the **Evidence (Miscellaneous Provisions)
Act 1958**

3. Explanatory Details

¹ Pt 1 Div. 1C: Section 7 of the **Evidence (Amendment) Act 1990**, No. 57/1990 reads as follows:

7 Repeals

- (1) The following Acts of the Parliament of the United Kingdom are repealed in so far as they are part of the law of Victoria:

The Foreign Tribunals Evidence Act 1856

The Evidence by Commission Act 1859

The Evidence by Commission Act 1885

- (2) Nothing in this section affects—
- (a) any application to any court or judge which is pending at the commencement of this Act;
 - (b) any certificate given for the purposes of such an application;
 - (c) any power to make an order on such an application; or
 - (d) the operation or enforcement of any order made on such an application.

² S. 12: Sections 11, 12 of the **Evidence (Audio Visual and Audio Linking) Act 1997**, No. 4/1997 read as follows:

11 Construction of references to bringing person before court

A reference in any Act or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a person appearing before, or being brought before, a court includes a reference to a person appearing before, or being brought to a place where facilities exist to enable a person to appear before, the court by audio or audio visual link within the meaning

of Part IIA of the **Evidence Act 1958** in accordance with Division 2 or 3 of that Part.

12 Transitional provisions

- (1) An amendment made by a provision of this Act to the **Evidence Act 1958**, the **Supreme Court Act 1986**, the **County Court Act 1958**, the **Magistrates' Court Act 1989** or the **Children and Young Persons Act 1989** applies to a proceeding that is commenced to be heard on or after the twenty-first day after the commencement of that amendment, irrespective of when the proceeding was commenced or when any offence to which the proceeding relates is alleged to have been committed.
- (2) For the purposes of 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.

³ 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.

⁴ Ss 41C and 41F: The amendment proposed by section 10 of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, No. 69/2009 is not included in this publication because sections 41C and 41F were repealed before this amendment came into operation.

⁵ Pt 2A: See note 2.

⁶ 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 Part 5.5 of the **Criminal Procedure Act 2009**, proceedings under the **Confiscation Act 1997** and proceedings under Division 1 or 2 of Part 4 of the **Sentencing Act 1991**.

⁷ 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).

⁸ S. 126: See section 103.

⁹ 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).

Evidence (Miscellaneous Provisions) Act 1958
No. 6246 of 1958

¹⁰ 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).

¹¹ 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).

¹² S. 152(1)(b): The amendment proposed by section 32(a) of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, No. 69/2009 is not included in this publication because section 152(1)(b) was repealed before this amendment came into operation.

¹³ Schedule 2: See note 2.