

Authorised Version No. 120

Instruments Act 1958

No. 6279 of 1958

Authorised Version incorporating amendments as at
21 August 2013

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Instruments Act 1958

No. 6279 of 1958

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21 August 2013

An Act to consolidate the Law relating to Instruments and
Securities.

**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 **Instruments 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 6531
s. 1(5)(a), 7547
s. 2(a), 9421
s. 4, 9650
s. 27(1)(a),
41/1987
s. 103(Sch. 4
item 38.1).

2 Repeal and savings

- (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under any of the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same

status operation and effect as they respectively would have had if such Acts had not been so repealed;

- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any mortgage lien pledge bill of exchange or sale bond guarantee security contract agreement policy promise representation assurance assignment transfer sale power of attorney writ judgment proceeding claim notice registration filing caveat or instrument condition fee liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act; nor shall such repeal make applicable to any bill of sale assignment transfer lien mortgage deed power of attorney or contract agreement or token of sale and purchase any provision of this Act to which the corresponding previous enactment was inapplicable immediately before the commencement of this Act.

- (3) The following Acts and enactment namely—

Instruments (Insurance Contracts) Act 1936;
Part III of the Companies Act 1938;
Industrial Life Assurance Act 1938;
Instruments (Insurance Contracts) Act 1939;
Ordinary Life Assurance Act 1940;
Industrial Life Assurance Act 1940;
Instruments (Insurance Contracts) Act 1943—

shall, notwithstanding the repeal thereof by this Act or otherwise, nevertheless continue in operation so that the rights powers and privileges under any such Act or enactment of the owner or

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s. 2

persons entitled to the benefit of any policy issued thereunder prior to the commencement of the Commonwealth Act known as the Life Insurance Act 1945 shall not be prejudicially affected.

PART I—SUMMARY PROCEEDINGS ON BILLS OF EXCHANGE

3 Definitions

No. 3706 s. 3.

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

S. 3 def. of *action* inserted by No. 9947 s. 2, amended by Nos 110/1986 s. 134(a), 19/1989 s. 16(Sch. item 29.1), 57/1989 s. 3(Sch. item 102.1).

action means and includes proceeding in the Supreme Court or in the County Court or complaint in the Magistrates' Court;

bill means bill of exchange (including cheque) or promissory note;

holder means the payee or indorsee of a bill who is in possession of it or the bearer thereof;

S. 3 def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 51).

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

No. 3706 s. 4.

S. 4 amended by Nos 7852 s. 2(a)(i)(ii), 110/1986 s. 134(b)(i)(ii)(iv), 35/1996 s. 453(Sch. 1 item 40.1).

4 Commencement of proceedings in the Supreme Court

Any proceeding in the Supreme Court upon a bill after the same has become due may be by writ in the form contained in the Second Schedule to this Act and indorsed as therein mentioned. And it shall be lawful for the plaintiff on filing an affidavit—

(a) where the defendant is a natural person, of personal service of such writ upon him or, where the Court makes an order for substituted service, of service in accordance with that order; or

S. 4(a)
amended by
Nos 110/1986
s. 134(b)(iii),
44/2001
s. 3(Sch.
item 65.1(a)).

* * * * *

S. 4(aa)
inserted by
No. 8565
s. 24(9),
substituted by
No. 9699 s. 23,
repealed by
No. 44/2001
s. 3(Sch.
item 65.1(b)).

(b) where the defendant is a company within the meaning of the Corporations Act, of service of such writ on the company in accordance with section 109X of that Act; or

S. 4(b)
substituted by
Nos 9699
s. 23, 44/2001
s. 3(Sch.
item 65.1(b)).

(c) where the defendant is a registered body within the meaning of the Corporations Act, of service of such writ on the registered body in accordance with section 601CX of that Act—

S. 4(c)
substituted by
Nos 9699
s. 23, 44/2001
s. 3(Sch.
item 65.1(b)).

and a copy of the writ and the indorsements thereon, in case the defendant has not obtained leave to appear and appeared to such writ according to the exigency thereof, at once to enter final judgment for any sum not exceeding the sum indorsed on the writ together with the interest at the rate specified (if any) to the date of the judgment, and such sum as is from time to time specified in the Rules of the Supreme Court for costs unless the plaintiff claims more than such sum, in which case the costs shall be assessed in the ordinary way; and the plaintiff may upon such judgment issue execution forthwith.

5 Appearance may be entered

S. 5
amended by
S.R. No.
375/1973
reg. 2(a),
No. 9947
s. 3(a)(b),
substituted by
No. 16/1986
s. 32(a).

S. 5(1)
amended by
No. 110/1986
s. 134(c)(i)(ii).

(1) The defendant may, within the relevant period after the service of a writ under section 4, enter an appearance to the writ if the defendant has made application to the Supreme Court and—

(a) paid into court the sum endorsed on the writ;
or

S. 5(1)(b)
amended by
No. 110/1986
s. 134(c)(i).

(b) filed affidavits satisfactory to the Court which disclose—

(i) a defence; or

(ii) such facts as would make it incumbent on the holder to prove consideration; or

S. 5(1)(b)(iii)
amended by
No. 110/1986
s. 134(c)(i).

(iii) such other facts as the Court deems sufficient to support the application—

and the Court has given leave to appear to the writ and defend the action upon such terms as to security or otherwise as to the Court seems fit.

(2) In subsection (1) *relevant period* means—

(a) if the defendant resides within 80 kilometres of the post office corner of Bourke and Elizabeth Streets Melbourne—16 days; and

(b) if the defendant resides beyond that distance—21 days.

6 Court may allow proceeding to be defended after judgment

After judgment the court may under special circumstances set aside the judgment and if necessary stay or set aside execution and may give leave to appear to the writ and to defend the proceeding if it appears to be reasonable to the court so to do, and on such terms as to the court seem just.

No. 3706 s. 6.
S. 6
amended by
No. 110/1986
s. 134(d)
(i)–(iii).

7 Bill to be deposited in court and plaintiff to give security for costs

In any proceedings under this Part it shall be competent to the court to order the bill sought to be proceeded upon to be forthwith deposited with an officer of the court; and further to order that all proceedings shall be stayed until the plaintiff has given security for the costs thereof.

No. 3706 s. 7.
S. 7
amended by
No. 110/1986
s. 134(e).

8 Expenses of noting may be recovered with the bill

The holder of every dishonoured bill shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or otherwise by reason of such dishonour, as he has under this Part for the recovery of the amount of such bill.

No. 3706 s. 8.

9 One writ may be issued against all the parties to a bill

The holder of any bill may if he thinks fit issue one writ according to this Part against all or any number of the parties to such bill; and such writ shall be the commencement of a proceeding or proceedings against the parties therein named respectively; and all subsequent proceedings against such respective parties shall be in like manner (so far as may be) as if separate writs had been issued.

No. 3706 s. 9.
S. 9
amended by
No. 110/1986
s. 134(f)(i)(ii).

s. 10

No. 3706 s. 10.

10 Practice in actions to apply

The practice and procedure for the time being applicable to and regulating actions at law shall (so far as the same are not inconsistent herewith) extend and apply to all proceedings taken under this Part.

No. 3706 s. 11.

S. 11
amended by
Nos 7852 s. 3,
110/1986
s. 134(g)(i)(ii),
57/1989
s. 3(Sch.
item 102.2).

11 Limitation of costs where amount recovered does not exceed \$2000

In any proceeding in the Supreme Court on a bill in which the amount (exclusive of costs) recovered by judgment or otherwise does not exceed \$2000 the costs to be allowed to the plaintiff shall not exceed what would have been allowed if the proceeding had been brought in the County Court unless the court otherwise orders.

No. 3706 s. 12.

S. 12
amended by
No. 7852
s. 2(b),
substituted by
No. 9947 s. 4.

12 This Part to apply to actions on bills in County Court and Magistrates' Courts

S. 12(1)
amended by
No. 57/1989
s. 3(Sch. item
102.3(a)).

(1) The provisions of sections 3 to 10 shall apply with such adaptations as are necessary to all actions on bills in the County Court and the Magistrates' Court.

S. 12(2)
amended by
No. 57/1989
s. 3(Sch. item
102.3(b)).

(2) An action referred to in subsection (1) shall be conducted in accordance with the rules made for the purposes of this section under the **County Court Act 1958** or the **Magistrates' Court Act 1989** (as the case may be).

No. 3706 s. 13.

13 Leave of judge necessary for more than one action on two or more matured bills

S. 13(1)
amended by
No. 57/1989
s. 3(Sch.
item 102.4).

(1) The bearer or holder of two or more matured bills shall not except by leave of the Supreme Court or County Court commence more than one action in respect thereof against the same person.

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Part I—Summary Proceedings on Bills of Exchange

s. 13

* * * * *

S. 13(2)
amended by
No. 8181
s. 2(1)(Sch.
item 73),
repealed by
No. 9947 s. 5.

**PART II—INSTRUMENTS CONNECTED WITH GAMING,
ETC., TRANSACTIONS**

Nos 3706
s. 14, 5741
s. 17(1).

**14 Certain instruments deemed to have been given for
an illegal consideration**

All bills notes cheques or mortgages drawn accepted made given granted or entered into or executed by any person or persons whomsoever where the whole or any part of the consideration is for any money or other valuable thing whatsoever won by gaming or playing at cards dice tables tennis bowls or other game or games whatsoever or by betting on the sides or hands of those who game at any of the games aforesaid or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid or lent or advanced at the time and place of such play to any person or persons so gaming or betting as aforesaid or that during such play so play or bet shall be deemed and taken to have been drawn accepted made given granted or entered into or executed for an illegal consideration:

S. 14 (Proviso)
substituted by
No. 73/2008
s. 31.

Provided that this section does not apply to any bill, note, cheque or mortgage where the whole or part of the consideration is for money won by betting by or with a bookmaker in accordance with section 4 of the **Racing Act 1958**.

PART III—POLICIES AND CONTRACTS OF INSURANCE

Division 1—Marine policies

15 No assurance to be made on ships etc.

No. 3706 s. 15.

No assurance or assurances shall be made by any person or persons bodies corporate or politic, on any ship or ships belonging to Her Majesty or any of her subjects or any goods merchandises or effects laden or to be laden on board of any such ship or ships, interest or no interest or without further proof of interest than the policy or by way of gaming or wagering or without benefit of salvage to the assurer.

16 Re-assurance of sea risks allowed

No. 3706 s. 16.

Notwithstanding anything contained in this Division, it shall be lawful to make re-assurance upon any ship or vessel or upon any goods merchandises or other property on board of any ship or vessel or upon the freight of any ship or vessel or upon any other interest in or relating to any ship or vessel which may lawfully be insured.

17 Plaintiff to declare within fifteen days what sums he had assured

No. 3706 s. 17.
S. 17
amended by
No. 35/1996
s. 453(Sch. 1
item 40.2).

In all actions or suits brought or commenced by the assured upon any policy of assurance, the plaintiff in such action or suit or his legal practitioner or agent shall, within fifteen days after he is required so to do in writing by the defendant or his legal practitioner or agent, declare in writing what sum or sums he had assured or caused to be assured in the whole; and what sums he hath borrowed at respondentia or bottomry for the voyage or any part of the voyage in question in such suit or action.

No. 3706 s. 18.

18 No policy to be made on any ship without inserting the name of one or more persons interested

It shall not be lawful for any person or persons to make or effect or cause to be made or effected any policy or policies of assurance upon any ship or ships vessel or vessels or upon any goods merchandises effects or other property whatsoever, without first inserting or causing to be inserted in such policy or policies of assurance the name or names or the usual style and firm of dealing of one or more of the persons interested in such insurance; or without instead first inserting or causing to be inserted in such policy or policies of assurance the name or names or the usual style and firm of dealing of the consignor or consignors consignee or consignees of the goods merchandises effects or property so to be insured or the name or names or the usual style and firm of dealing of the person or persons residing in Victoria who receive the order for and effect such policy or policies of assurance or of the person or persons who give the order or direction to the agent or agents immediately employed to negotiate or effect such policy or policies of assurance.

No. 3706 s. 19.

19 Policies made contrary to this Act void

Every policy and policies of assurance made or underwritten contrary to any provision of this Division shall be null and void to all intents and purposes whatsoever.

No. 3706 s. 20.

20 Policies covered by Commonwealth Act excluded

This Division shall not apply to any contract or policy of Marine Insurance to which the Commonwealth Act known as the **Marine Insurance Act 1909** applies.

Division 2—Life and other policies

21 No insurance to be made unless insurer has interest **No. 3706 s. 21.**

No insurance shall be made by any person or persons bodies politic or corporate on the life or lives of any person or persons or on any other event or events whatsoever wherein the person or persons for whose use benefit or on whose account the policy or policies are made shall have no interest or by gaming or wagering; and every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever.

22 No policy without inserting names **No. 3706 s. 22.**

It shall not be lawful to make any policy or policies on the life or lives of any person or persons or other event or events without inserting in such policy or policies the name or names of the person or persons interested therein or for whose use benefit or on whose account such policy is so made or underwritten.

23 How much may be recovered **No. 3706 s. 23.**

In all cases where the insured has interest in such life or lives event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives or other event or events.

24 Not to extend to ships etc. **No. 3706 s. 24.**

Nothing in this Division shall extend or be construed to extend to insurance bona fide made by any person or persons on ships goods or merchandises; but every such insurance shall be as valid and effectual in the law as if this Division had not been made.

Division 3—Other provisions relating to insurance contracts

No. 4464
s. 2(1).

25 Insurance contracts other than life insurance contracts

No contract of insurance (other than a contract of life insurance) shall be avoided by reason only of any incorrect statement made by the proponent in any proposal or other document on the faith of which such contract was entered into revived or renewed by the insurer unless the statement so made was fraudulently untrue or material in relation to the risk of the insurer under the contract.

No. 4660 s. 2.

26 Life insurance contracts

A contract of life insurance upon the life of any person, whether entered into before or after the commencement of this Act, shall not be void or voidable merely on the ground that such person after the commencement of the **Instruments (Insurance Contracts) Act 1939** died by his own hand or act, if upon the true construction of the contract the insurer has thereby agreed to pay the sum assured in the events that have happened.

No. 4464 s. 3.
S. 27
amended by
No. 50/2011
s. 46(Sch.
item 10.1).

27 Maintenance of proceedings under insurance contracts

If by reason of accident mistake or other reasonable cause any insured fails to give any notice or make any claim in the manner and within the time required by the contract of insurance such failure shall not be a bar to the maintenance of any proceedings (whether legal proceedings or arbitration proceedings) upon the contract by the insured unless the court or the arbitral tribunal (as the case may be) considers that the insurer has been so prejudiced by such failure that it would be inequitable if such failure

were not a bar to the maintenance of such proceedings.

28 Arbitration

Nos 4464 s. 4,
4490 s. 2.

- (1) Where any provision in any contract of insurance makes provision with respect to the settlement of disputes by arbitration that provision shall be deemed to be an arbitration agreement within the meaning of the **Commercial Arbitration Act 2011** and the provisions of that Act shall notwithstanding anything in the contract apply accordingly.
- (2) The arbitration of any claim upon a contract of insurance by an insured or by any person claiming through or under an insured shall not be a condition precedent to the institution of proceedings in any court of competent jurisdiction by the insured or any such person upon such contract, and where any such proceedings are so instituted—

S. 28(1)
amended by
Nos 10167
s. 3(1),
50/2011
s. 46(Sch.
item 10.2).

* * * * *

S. 28(2)(a)
amended by
No. 57/1989
s. 3(Sch.
item 102.5),
repealed by
No. 50/2011
s. 46(Sch.
item 10.3).

- (b) no action shall lie against the insured or any such person as aforesaid for breach of any provision of the contract relating to the settlement of disputes by arbitration.

29 Division to apply to all contracts of insurance

No. 4464 s. 5.

- (1) The provisions of this Division shall—
- (a) apply with respect to every contract of insurance whether made before or after the commencement of this Act; and

(b) take effect notwithstanding anything in any contract of insurance or other agreement whether made before or after the commencement of this Act:

Provided that the provisions of this Division shall not apply with respect to any contract of insurance so far as relates to any claim which arose out of any event which occurred before the commencement of the **Instruments (Insurance Contracts) Act 1936**.

- (2) The foregoing provisions of this section shall not apply with respect to section twenty-six of this Act.
- (3) This Division shall be read and construed subject to the Commonwealth Act known as the Life Insurance Act 1945–1953 and any amendment thereof.
-

PART IV—BONDS

30 Actions on bonds etc.

No. 3706 s. 25.

- (1) In any action on any bond or on any penal sum for non-performance of any covenant or agreement in any indenture deed or writing the plaintiff may assign as many breaches as he thinks fit and may recover not only such damages as have been usually awarded in such cases, but also damages for such of the said breaches so assigned as the plaintiff proves to have occurred; and judgment may be entered as nearly as may be as heretofore has been usually done in such actions.
- (2) If interlocutory judgment in any case is given for the plaintiff by confession or in default of appearance or of pleading, the plaintiff may suggest as many breaches of the covenants and agreements as he thinks fit and may on proof of such breaches recover damages accordingly.
- (3) If the defendant after judgment and before execution pays into the court where the action is brought to the use of the plaintiff such damages together with the costs of the action, or if by reason of any execution the plaintiff is fully paid or satisfied all such damages together with his costs of the action and all reasonable charges and expenses for the said execution, further proceedings in the said judgment shall be stayed. But notwithstanding in each case such judgment shall remain as a further security to answer to the plaintiff such damages as are sustained for further breach of any covenant or agreement in the same indenture deed or writing contained, and upon any such breach the plaintiff may summon the defendant or his executors or administrators to show cause before the court why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceeding or

**S. 30(3)
amended by
No. 57/1989
s. 3(Sch. item
102.6(a)(b)).**

such other proceeding as the court may order for inquiry as to such breaches and assessing damages thereon; and upon payment or satisfaction in manner as aforesaid of such future damages costs charges and expenses as aforesaid all further proceedings on the said judgment shall to the like extent again be stayed.

- (4) Where an action is brought upon any bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor has before the action brought paid to the obligee the principal and interest due by the defeasance or condition of such bond, though such payment was not made strictly according to the condition or defeasance, yet it may nevertheless be pleaded in bar of such action; and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.
- (5) If at any time pending an action upon any such bond with a penalty the defendant brings into court all the principal money and interest due on such bond and also all costs properly chargeable by the plaintiff against the defendant in respect of any actions or suits upon such bond, the said money so brought in shall be deemed and taken to be in full satisfaction and discharge of the said bond; and the court shall give judgment to discharge every such defendant of and from the same accordingly.

PART V—PUBLIC CONTRACTS

31 Effect of public contracts of Ministers or officers

No. 3706 s. 26.

Whenever any contract, agreement, bond, mortgage, security, deed, or instrument of any kind whatsoever made entered into or given either before or after the commencement of this Act by with or to a Responsible Minister of the Crown administering any department or by with or to an officer in the service of Her Majesty, is expressed to be made entered into or given by with or to such Minister or officer and his successors in office or is either expressly or impliedly made entered into or given by with or to such Minister or officer in his capacity as such Minister or officer or whatever the form thereof is in fact made entered into or given for or in connexion with any public purpose, such contract, agreement, bond, mortgage, security, deed, or instrument shall be deemed to be made entered into or given by with or to any Minister for the time being administering such department or (as the case may be) by with or to any officer for the time being performing the duties of the office held by such first-mentioned officer at the time the contract, agreement, bond, mortgage, security, deed, or instrument was made entered into or given.

s. 31A

Pt 5A
(Heading and
s. 31A)
inserted by
No. 7547
s. 2(b).

PART VA—CORPORATE BODIES CONTRACTS

S. 31A
inserted by
No. 7547
s. 2(b).

31A Formalities of making, varying or discharging a contract

- (1) So far as the formalities of making varying or discharging a contract are concerned, any person acting under the authority express or implied of a body corporate may make, vary or discharge any contract in the name or on behalf of the body corporate in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making variation or discharge of a contract according to this section shall be effectual in law and shall bind the body corporate and its successors and all other parties thereto.
- (3) Nothing in this section shall be taken as preventing a body corporate from making, varying or discharging a contract under its common seal.
- (4) This section shall not apply to the making variation or discharge of a contract before the commencement of the **Instruments (Corporate Bodies Contracts) Act 1967** but shall apply whether the body corporate gave its authority before or after the commencement of the **Instruments (Corporate Bodies Contracts) Act 1967**.
- (5) Nothing in this section shall limit the operation or effect of any enactment which requires any sanction or consent to be obtained or any procedure to be complied with either before or after any contract is made, varied or discharged.

Instruments Act 1958
No. 6279 of 1958
Part VA—Corporate Bodies Contracts

s. 31A

(6) This section shall apply to a body corporate wherever incorporated but shall not apply to any company within the meaning of the Corporations Act.

S. 31A(6)
amended by
Nos 9699
s. 23, 44/2001
s. 3(Sch.
item 65.2).

Instruments Act 1958
No. 6279 of 1958

s. 32

Pt 6 * * * * *
(Heading and
ss 32–58)
amended by
Nos 6438 ss 2,
3(a)(b), 4, 5(1),
6–9, 7941 s. 2,
8181
s. 2(1)(Sch.
item 74), 8198
ss 3–15,
repealed by
No. 9650
s. 27(1)(b).

Pt 7 * * * * *
(Heading
and ss 59–68)
amended by
Nos 8181
s. 2(1)(Sch.
items 71, 73),
9554
s. 2(2)(Sch. 2
item 101),
9650
s. 27(1)(c),
16/1986 s. 30,
15/1987
s. 31(2)(a),
41/1987
s. 103(Sch. 4
item 38.2),
57/1989
s. 3(Sch.
items 102.7,
102.8),
49/1994
s. 9(2),
69/2009
s. 54(Sch. Pt 2
item 28),
repealed by
No. 74/2010
s. 15(1).

Instruments Act 1958
No. 6279 of 1958

s. 69

*	*	*	*	*	Pt 8 (Heading and ss 69–82) amended by Nos 6505 s. 2, 8181 s. 2(1)(Sch. item 75), 9576 s. 11(1), 9650 s. 27(1)(d), 15/1987 s. 31(2)(b), 57/1989 s. 3(Sch. item 102.9), 84/2001 s. 6, 69/2009 s. 54(Sch. Pt 2 item 28), repealed by No. 74/2010 s. 15(3).
*	*	*	*	*	Pt 9 (Heading and ss 83–96) amended by Nos 6867 s. 2(Sch. 1), 8181 s. 2(1)(Sch. item 72), 19/1989 s. 16 (Sch. items 29.2(a)(b), 29.3(a)(b), 29.4(a)(b), 29.5(a)–(c)), 57/1989 s. 3 (Sch. items 102.10, 102.11), repealed by No. 84/1997 s. 48(1).
*	*	*	*	*	Pt 10 (Heading and ss 97–103) repealed by No. 6531 s. 1(5)(b).

s. 104

PART XI—POWERS OF ATTORNEY

Pt 11
(Heading and
ss 104–125)
amended by
Nos 6505 s. 2,
9075 s. 5(1),
substituted as
Pt 11
(Heading and
ss 104–113) by
No. 9421 s. 2.

S. 104
substituted by
No. 9421 s. 2.

104 Definitions

In this Part—

attorney in relation to a power of attorney means a person appointed attorney under the power of attorney;

S. 104 def. of
*enduring
power of
attorney*
inserted by
No. 9691 s. 2,
repealed by
No. 75/2003
s. 3(1).

* * * * *

S. 104 def. of
Public Trustee
inserted by
No. 9691 s. 2,
repealed by
No. 75/2003
s. 3(1).

* * * * *

purchaser means a purchaser for valuable consideration and includes a lessee mortgagee or other person who for valuable consideration acquires an interest in property and *purchase* has a meaning corresponding with that of purchaser and *valuable consideration* includes marriage but does not include a nominal consideration in money;

tenant for life and *statutory owner* have the same meaning as in the **Settled Land Act 1958**.

105 Application of Part

- (1) Except where otherwise expressly provided the provisions of this Part shall apply only to powers of attorney created on or after the commencement of the **Instruments (Powers of Attorney) Act 1980**.
- (2) Notwithstanding the repeal of Part XI of the **Instruments Act 1958** and section 94(2) of the **Transfer of Land Act 1958** as in force immediately before the commencement of the **Instruments (Powers of Attorney) Act 1980** the provisions of that Part and that section as so in force shall continue to apply to and in relation to powers of attorney created before the commencement of that Act.
- (3) Except as expressly provided in Part XIA, this Part does not apply to enduring powers of attorney.

S. 105
substituted by
No. 9421 s. 2.

S. 105(3)
inserted by
No. 75/2003
s. 3(2).

106 Execution of powers of attorney

- (1) An instrument creating a power of attorney may be executed by, or by direction and in the presence of, the donor of the power.
- (2) Where such an instrument is executed by a person by direction and in the presence of the donor of the power, two other persons shall be present as witnesses and shall attest the instrument.

S. 106
substituted by
No. 9421 s. 2.

107 Form of power of attorney

- (1) A general power of attorney in or to the effect of the form set out in Schedule 12 shall operate to confer—
 - (a) on the attorney under the power; or

S. 107
substituted by
No. 9421 s. 2.

(b) if there is more than one attorney, on the attorneys acting jointly or acting jointly or severally, as the case may be—

authority to do on behalf of the donor anything (other than delegate his powers under the power of attorney) which he can lawfully do by an attorney.

- (2) A general power of attorney given by a person shall not operate to delegate to the attorney under the power the execution or exercise of all or any trusts, powers and discretions vested in him as trustee, either alone or jointly with any other person or persons.
- (3) In this section *trustee* includes a tenant for life and a statutory owner.

S. 108
substituted by
No. 9421 s. 2.

108 Execution of instrument etc. by attorney

(1) The attorney under a power of attorney may, if he thinks fit—

(a) execute any instrument with his own signature, and, where sealing is required or employed, with his own seal; and

(b) do any other thing in his own name—

and any instrument executed or thing done in that manner shall be as effective as if executed or done by the attorney under the power—

(a) with the signature;

(b) with the signature and seal; or

(c) in the name—

(as the case may be) of the donor of the power.

(2) Notwithstanding the provisions of subsection (1), an instrument executed by the attorney under a power of attorney shall be executed in such a way

as to show that he does so as attorney for the donor of the power.

- (3) This section applies to a power of attorney whether created before or after the commencement of the **Instruments (Powers of Attorney) Act 1980**.
- (4) For the avoidance of doubt it is hereby declared that an instrument to which subsection (3) or (4) of section 74 of the **Property Law Act 1958** applies may be executed either as provided in those subsections or as provided in this section.

109 Powers of attorney given as security

S. 109
substituted by
No. 9421 s. 2.

- (1) Where a power of attorney is expressed to be irrevocable and is granted to secure—
 - (a) a proprietary interest of the attorney under the power; or
 - (b) the performance of an obligation owed to the attorney—

then, so long as the attorney has that interest or the obligation remains undischarged, the power shall not be revoked—

- (c) by the donor without the consent of the attorney; or
 - (d) by the death or incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding up or dissolution.
- (2) A power of attorney given to secure a proprietary interest may be given to the person entitled to the interest and the persons deriving title under him to that interest, and those persons shall be duly constituted attorneys under the power for all purposes of the power but without prejudice to any right to appoint substitutes given by the power.

S. 110
substituted by
No. 9421 s. 2.

**110 Protection of attorney and third persons where
power of attorney is revoked**

(1) Where—

- (a) an attorney does an act under a power of attorney within the scope of the power; and
- (b) at that time the attorney does not have notice that the power had been revoked—

he shall be entitled to rely on the power, as against the donor and any other person, notwithstanding any revocation of the power before the time of the act, in the same manner and to the same extent as if the power had not been revoked before the time of the act.

(2) Where—

- (a) an attorney does an act under a power of attorney within the scope of the power;
- (b) at the time of the act of the attorney or afterwards, a third person—
 - (i) acts as a purchaser or incurs an obligation or otherwise acts to his detriment in a transaction (with the attorney or with any other person) which depends for its validity or effect on the power not having been revoked at the time of the act of the attorney; or
 - (ii) acts in reliance on a right, title or interest which so depends; and
- (c) at the time of the act of the third person he does not have notice that the power had been revoked before the time of the act of the attorney—

the third person and any person claiming under him shall be entitled as against the donor and the attorney and any other person, to rely on the

power, notwithstanding any revocation of the power before the time of the act of the attorney, in the same manner and to the same extent as if the power had not been revoked before the time of the act of the attorney.

- (3) Subsection (2) shall not entitle an attorney to rely on a power in support of an act within the scope of the power done by him with notice of revocation of the power.
- (4) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the third person knows that it was not in fact given by way of security, he shall be entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the attorney and shall accordingly be treated for the purposes of subsection (2) as having notice of the revocation only if he knows that it has been revoked in that manner.
- (5) Except as is otherwise expressly provided in subsection (4) notice of the revocation of a power of attorney includes notice of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.

111 Proof of instrument creating powers

- (1) The contents of an instrument creating a power of attorney may be proved by means of a copy which—
 - (a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and

S. 111
substituted by
No. 9421 s. 2.

s. 111

S. 111(1)(b)
amended by
Nos 35/1996
s. 453(Sch. 1
item 40.2),
9/2002
s. 3(Sch.
item 9(a)),
52/2001
s. 13(3).

(b) contains the following certificate or certificates signed by the donor of the power or by a legal practitioner, financial services licensee, regulated principal, justice of the peace, public notary or any other officer authorized by law to administer an oath or by a person of a prescribed class, that is to say—

- (i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and
- (ii) if the original consists of two or more pages, a certificate at the end of each page which creates the power of attorney of the copy to the effect that it is a true and complete copy of the corresponding page of the original.

(2) Where a copy of an instrument creating a power of attorney has been made which complies with subsection (1), the contents of the instrument may also be proved by means of a copy of that copy if the further copy itself complies with that subsection, taking references in it to the original as references to the copy from which the further copy is made.

(3) For the purposes of this section a document shall be deemed to be reproduced in facsimile notwithstanding that the reproduction is enlarged or reduced in size so long as the document is clearly legible.

(4) In subsection (1)—

financial services licensee means a financial services licensee (as defined in section 761A of the Corporations Act) whose licence covers dealing in securities;

S. 111(4)
substituted by
Nos 9699
s. 23, 9/2002
s. 3(Sch.
item 9(b)).

regulated principal means a regulated principal (as defined in section 1430 of the Corporations Act) who is authorised by Subdivision D of Division 1 of Part 10.2 of that Act to deal in securities.

112 References to instruments

S. 112 substituted by No. 9421 s. 2.

In this Part a reference to an instrument includes a reference to a copy of the instrument which complies with the requirements of section 111.

113 Regulations

S. 113 substituted by No. 9421 s. 2.

The Governor in Council may make regulations for or with respect to any matter or thing which by this Part is authorized or required to be prescribed or which is necessary or convenient to be prescribed for the purposes of this Part.

* * * * *

S. 114 repealed by No. 9421 s. 2, new s. 114 inserted by No. 9691 s. 3, repealed by No. 75/2003 s. 3(3).

* * * * *

S. 115 repealed by No. 9421 s. 2, new s. 115 inserted by No. 9691 s. 3, repealed by No. 75/2003 s. 3(3).

* * * * *

S. 116 repealed by No. 9421 s. 2, new s. 116 inserted by No. 9691 s. 3, repealed by No. 75/2003 s. 3(3).

Instruments Act 1958
No. 6279 of 1958
Part XI—Powers of Attorney

s. 117

	*	*	*	*	*
<p>S. 117 repealed by No. 9421 s. 2, new s. 117 inserted by No. 9691 s. 3, amended by Nos 58/1986 s. 87(a), 7/1990 s. 11, 52/1998 s. 311(Sch. 1 item 43.1), repealed by No. 75/2003 s. 3(3).</p>					
<p>S. 118 repealed by No. 9421 s. 2, new s. 118 inserted by No. 9691 s. 3, amended by Nos 58/1986 s. 87(b)–(d), 52/1998 s. 311(Sch. 1 item 43.2), repealed by No. 75/2003 s. 3(3).</p>	*	*	*	*	*
<p>Ss 119–125 repealed by No. 9421 s. 2.</p>	*	*	*	*	*

PART XIA—ENDURING POWERS OF ATTORNEY

Division 1—Introductory

Pt 11A
(Heading and
ss 114–
125ZP)
inserted by
No. 75/2003
s. 4.

114 Interpretation

New s. 114
inserted by
No. 75/2003
s. 4.

(1) In this Part—

approved form means a form approved by the
Secretary under section 125ZL;

donor means a person who makes an enduring
power of attorney;

enduring power of attorney means a power of
attorney referred to in section 115;

insolvent means insolvent under administration;

S. 114(1)
def. of
insolvent
amended by
No. 4/2008
s. 32(Sch.
item 16).

Public Advocate means the person appointed as
the Public Advocate under the
**Guardianship and Administration Act
1986**;

relative means—

- (a) spouse or domestic partner (within the
meaning of the **Guardianship and
Administration Act 1986**); or
- (b) son or daughter; or
- (c) mother or father; or
- (d) brother, sister, half-brother, half-sister,
adoptive brother, adoptive sister, step-
brother or step-sister; or
- (e) grandfather or grandmother; or

- (f) grandson or granddaughter; or
- (g) uncle or aunt; or
- (h) nephew or niece;

Secretary means Secretary to the Department of Justice;

Tribunal means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

Division 2—Making an enduring power of attorney

115 What is an enduring power of attorney?

- (1) By an enduring power of attorney, an adult person (*donor*) may—
 - (a) authorise one or more persons (*attorneys*) to do anything on behalf of the donor that the donor can lawfully authorise an attorney to do; and
 - (b) provide conditions and limitations on, and instructions about, the exercise of the power.
- (2) Despite any rule of law to the contrary, an enduring power of attorney is not revoked by the subsequent legal incapacity of the donor of the power.

New s. 115
inserted by
No. 75/2003
s. 4.

116 Recognition of enduring powers made in other States and Territories

If an enduring power of attorney is made in another State or Territory and complies with the requirements of that other State or Territory, then, to the extent the powers it gives could validly have been given by an enduring power of attorney made under this Part, the enduring power of attorney is to be taken to be an enduring power of

New s. 116
inserted by
No. 75/2003
s. 4.

attorney made under, and in compliance with, this Part.

117 When is the attorney's power exercisable?

New s. 117
inserted by
No. 75/2003
s. 4.

- (1) A donor may specify in an enduring power of attorney a time from which, circumstance in which, or occasion on which, a power is exercisable.
- (2) If the enduring power of attorney does not specify a time from which, circumstance in which, or occasion on which, a power becomes exercisable, the power becomes exercisable once the enduring power of attorney is made.

118 When does a donor have capacity to make an enduring power of attorney?

New s. 118
inserted by
No. 75/2003
s. 4.

- (1) A donor may make an enduring power of attorney only if the donor understands the nature and effect of the enduring power of attorney.
- (2) Understanding the nature and effect of the enduring power of attorney includes understanding the following matters—
 - (a) that the donor may, in the power of attorney, specify conditions or limitations on, or instructions about, the exercise of the power to be given to the attorney;
 - (b) when the power is exercisable;
 - (c) that once the power is exercisable, the attorney has the same powers as the donor had (when not under a legal incapacity) to do anything for which the power is given subject to any limitations or restrictions on exercising the power included in the enduring power of attorney;

- (d) that the donor may revoke the enduring power of attorney at any time the donor is capable of making an enduring power of attorney;
- (e) that the power the attorney is given continues even if the donor subsequently ceases to have legal capacity;
- (f) that at any time that the donor is not capable of revoking the enduring power of attorney, the donor is unable to effectively oversee the use of the power.

Note

It is advisable for the witness to make a written record of the evidence as a result of which the witness considers that the donor understands these matters.

New s. 119
inserted by
No. 75/2003
s. 4.

119 Appointment of one or more attorneys

- (1) A donor may in an enduring power of attorney appoint—
 - (a) a single attorney; or
 - (b) 2 or more joint attorneys; or
 - (c) 2 or more joint and several attorneys.
- (2) If 2 or more joint attorneys are appointed, all the attorneys can act only if they all agree and any documents must be signed by all of them.
- (3) If 2 or more joint and several attorneys are appointed—
 - (a) all the attorneys can act together if they all agree and any documents can be signed by all of them; or

S. 119(1)(b)
amended by
No. 29/2011
s. 3(Sch. 1
item 46).

(b) any of the attorneys can act and sign documents together or alone.

(4) An attorney must be at least 18 years old.

120 Appointment of alternative attorney

New s. 120
inserted by
No. 75/2003
s. 4.

(1) A donor may in an enduring power of attorney appoint an adult person as an alternative attorney for a person appointed as attorney.

(2) An alternative attorney may act as attorney under the enduring power of attorney only in the event of the death or during the period of the absence or legal incapacity of the attorney for whom the alternative attorney is appointed.

121 Can a person who is insolvent be an attorney?

New s. 121
inserted by
No. 75/2003
s. 4.

A person is not eligible to be appointed as an attorney under an enduring power of attorney if the person is insolvent.

122 Attorney can be head of religious order

New s. 122
inserted by
No. 75/2003
s. 4.

(1) A person who is a member of a religious order may appoint the person who is the holder of the position of Victorian head of that order or the head of a local chapter of that order in Victoria as the attorney under an enduring power of attorney.

(2) If an attorney is appointed under an enduring power of attorney in accordance with subsection (1), the person who is from time to time the holder of the position of Victorian head of the religious order or head of the relevant chapter of the order is deemed to be the attorney appointed under that enduring power of attorney.

New s. 123
inserted by
No. 75/2003
s. 4.

123 What are the formal requirements for making an enduring power of attorney?

- (1) An enduring power of attorney must be in the approved form.

Note

An approved form is a form approved by the Secretary to the Department of Justice under section 125ZL.

- (2) An enduring power of attorney must be signed—
 - (a) by the donor of the power; or
 - (b) by direction, and in the presence, of the donor of the power, by an eligible person.
- (3) The power of attorney must be signed and dated by 2 adult witnesses in the presence of the donor and each other.
- (4) The witnesses must be in accordance with section 125.
- (5) The enduring power of attorney must contain a certificate signed by each witness in accordance with section 125A.

New s. 124
inserted by
No. 75/2003
s. 4.

124 Who can sign for the donor?

A person is eligible to sign an enduring power of attorney for the donor if the person—

- (a) is at least 18 years old; and
- (b) is not a witness for the enduring power of attorney; and
- (c) is not an attorney for the donor or a person nominated as an attorney in the enduring power of attorney.

125 Who can be a witness?

New s. 125
inserted by
No. 75/2003
s. 4.

- (1) A person cannot be a witness to an enduring power of attorney if the person is—
 - (a) the donor of the power; or
 - (b) the person appointed as attorney.
- (2) Only one of the witnesses can be a relative of the donor of the power or of the person appointed as attorney.
- (3) One of the witnesses must be a person authorised by law to witness the signing of a statutory declaration.

125A What must the witnesses certify?

S. 125A
inserted by
No. 75/2003
s. 4.

- (1) If an enduring power of attorney is signed by the donor, it must include a certificate signed by each witness stating that—
 - (a) the donor signed the enduring power of attorney freely and voluntarily in the presence of the witness; and
 - (b) at the time, the donor appeared to the witness to have the capacity necessary to make the enduring power of attorney.
- (2) If an enduring power of attorney is signed by a person for the donor, it must include a certificate signed by each witness stating that—
 - (a) the donor of the power directed the person to sign the enduring power of attorney for the donor; and
 - (b) the donor of the power gave that direction freely and voluntarily in the presence of the witness; and
 - (c) the person signed it in the presence of the donor and the witness; and

- (d) at the time, the donor appeared to the witness to have the capacity necessary to make the enduring power of attorney.

S. 125B
inserted by
No. 75/2003
s. 4.

125B Signature and undertaking of attorney required

- (1) An enduring power of attorney is effective in relation to an attorney only if the attorney has accepted the appointment in accordance with this section.
- (2) The attorney must sign and date a statement of acceptance.
- (3) The statement of acceptance must be in the approved form.

Note

An approved form is a form approved by the Secretary to the Department of Justice under section 125ZL.

- (4) The statement of acceptance must be endorsed on or attached to the enduring power of attorney.
- (5) The statement of acceptance must include an undertaking by the person accepting appointment as attorney—
 - (a) to exercise the powers conferred by the enduring power of attorney with reasonable diligence to protect the interests of the donor; and
 - (b) to avoid acting where there is any conflict of interest between the interests of the donor and the attorney's interests; and
 - (c) to exercise the powers conferred by the enduring power of attorney in accordance with this Part.

125C Enduring power of attorney to be a deed

An enduring power of attorney that complies with this Division is to be taken to be and have effect as a deed, even if it is not expressed to be executed under seal.

S. 125C
inserted by
No. 75/2003
s. 4.

Division 3—Role of attorney

125D Requirement to keep records

An attorney under an enduring power of attorney must keep and preserve accurate records and accounts of all dealings and transactions made under the power.

S. 125D
inserted by
No. 75/2003
s. 4.

125E Powers of attorney to execute instruments etc.

- (1) The attorney under an enduring power of attorney may, if the attorney thinks fit—
- (a) execute any instrument with the attorney's own signature, and, where sealing is required or employed, with the attorney's own seal; and
 - (b) do any other thing in the attorney's own name.
- (2) An instrument executed by the attorney under an enduring power of attorney must be executed in such a way as to show that the attorney does so as attorney for the donor of the power.
- (3) An instrument executed or thing done in the way specified in this section is as effective as if executed or done by the donor—
- (a) with the donor's signature; or
 - (b) with the donor's signature and seal; or
 - (c) in the donor's name.

S. 125E
inserted by
No. 75/2003
s. 4.

s. 125F

S. 125F
inserted by
No. 75/2003
s. 4.

125F Role of attorney where guardian appointed

- (1) An enduring power of attorney does not authorise the attorney to make a decision about the medical treatment of the donor of the power.
- (2) If a decision made by a guardian or enduring guardian within the meaning of the **Guardianship and Administration Act 1986** in the exercise of a power as guardian or enduring guardian conflicts with a decision made by an attorney under an enduring power of attorney, the decision of the guardian or enduring guardian prevails.

S. 125G
inserted by
No. 75/2003
s. 4.

125G Role of attorney where administrator appointed

If the Tribunal makes an administration order under the **Guardianship and Administration Act 1986** in respect of the person who is the donor of an enduring power of attorney, the attorney may exercise power under the enduring power of attorney only to the extent authorised by the Tribunal.

Division 4—How is an enduring power of attorney revoked?

Subdivision 1—Introductory

S. 125H
inserted by
No. 75/2003
s. 4.

125H Division not to affect revocation under other laws

- (1) This Division does not limit the events by which or the circumstances in which an enduring power of attorney—
 - (a) is revoked whether orally or in writing or in another way; or
 - (b) is terminated by implication or operation of law.

- (2) Without limiting subsection (1), an enduring power of attorney may be revoked in any way that a power of attorney may be revoked.

Subdivision 2—Revocation by donor

125I Revocation in writing

The donor of an enduring power of attorney may revoke the enduring power of attorney in writing in the approved form.

S. 125I
inserted by
No. 75/2003
s. 4.

Notes

- 1 An approved form is a form approved by the Secretary to the Department of Justice under section 125ZL.
- 2 This is not the only way a power of attorney can be revoked in writing. See section 125H.

125J Revocation by later enduring power of attorney

A donor's enduring power of attorney is revoked, to the extent of any inconsistency, by a later enduring power of attorney of the donor.

S. 125J
inserted by
No. 75/2003
s. 4.

125K Death

An enduring power of attorney is revoked when the donor dies.

S. 125K
inserted by
No. 75/2003
s. 4.

Subdivision 3—Revocation according to terms

125L According to terms

An enduring power of attorney is revoked according to its terms.

S. 125L
inserted by
No. 75/2003
s. 4.

Example

If an enduring power of attorney is expressed to operate for or during a specified period, it is revoked at the end of that period.

s. 125M

Subdivision 4—Revocation by attorney

S. 125M
inserted by
No. 75/2003
s. 4.

125M Resignation

- (1) An attorney may resign as attorney by signed notice given to the donor.
- (2) Despite subsection (1), if a donor ceases to have legal capacity, an attorney under an enduring power of attorney may only resign as attorney with the leave of a court or the Tribunal.
- (3) If an attorney under an enduring power of attorney resigns, the power of attorney is revoked to the extent that it confers power on the attorney.

S. 125N
inserted by
No. 75/2003
s. 4.

125N Legal incapacity

If an attorney under an enduring power of attorney ceases to have legal capacity, the power of attorney is revoked to the extent that it confers power on the attorney.

S. 125O
inserted by
No. 75/2003
s. 4.

125O Revocation if attorney becomes insolvent

If an attorney under an enduring power of attorney becomes insolvent, the power of attorney is revoked to the extent that it confers power on the attorney.

S. 125P
inserted by
No. 75/2003
s. 4.

125P Death

If an attorney under an enduring power of attorney dies, the power of attorney is revoked to the extent that it confers power on the attorney.

Subdivision 5—Revocation by Tribunal

S. 125Q
inserted by
No. 75/2003
s. 4.

125Q Revocation by Tribunal

An enduring power of attorney may be revoked by the Tribunal under Division 6.

Subdivision 6—Effect of revocation if more than one attorney

125R Effect of revocation if more than one attorney

S. 125R
inserted by
No. 75/2003
s. 4.

- (1) If 2 or more persons are appointed jointly and severally as attorneys under an enduring power of attorney, the revocation of the power in relation to one attorney does not affect the appointment or powers of the remaining attorneys.
- (2) If 2 or more persons are appointed jointly (but not jointly and severally) as attorneys under an enduring power of attorney, the revocation of the power in relation to one joint attorney also revokes the power in relation to each of the other joint attorneys.

Division 5—Protection from liability

125S Definitions

S. 125S
inserted by
No. 75/2003
s. 4.

In this Division—

invalidity, in relation to a power under an enduring power of attorney, includes invalidity because—

- (a) the power is not exercisable at the time when, circumstance in which, or occasion on which it is purportedly exercised; or
- (b) the enduring power of attorney has been declared to be invalid by a court or the Tribunal; or
- (c) the enduring power of attorney has been revoked; or
- (d) the enduring power of attorney was made in another State or Territory and does not comply with the requirements of that other State or Territory;

s. 125T

know in relation to the invalidity of a power,
includes—

- (a) know of the happening of an event
(such as the death of the donor) that
invalidates the power; or
- (b) have reason to believe the power is
invalid.

S. 125T
inserted by
No. 75/2003
s. 4.

**125T Protection if Court or Tribunal has given advice or
direction or recommendation**

An attorney under an enduring power of attorney
who acts in compliance with the advice, directions
or recommendations of—

- (a) the Supreme Court in relation to the enduring
power of attorney; or
- (b) the Tribunal under this Part—

is deemed to have complied with this Part unless
the attorney knowingly gave the Court or the
Tribunal false or misleading information relevant
to the advice, directions or recommendations of
the Court or the Tribunal.

S. 125U
inserted by
No. 75/2003
s. 4.

**125U Protection for attorney and third persons who are
unaware of invalidity**

- (1) An attorney who, in good faith and without
knowing a power under the enduring power of
attorney is invalid, purports to exercise the power,
is entitled as against the donor and any other
person, to rely on the power despite the invalidity.
- (2) A person (and any person claiming under that
person) who, in good faith and without knowing a
power under an enduring power of attorney is
invalid, acts in reliance on the purported exercise
of the power by an attorney, is entitled as against
the donor and any other person to rely on the
power despite the invalidity.

Division 6—Jurisdiction of Tribunal

Subdivision 1—General powers of Tribunal

125V Application to Tribunal

S. 125V
inserted by
No. 75/2003
s. 4.

- (1) An application may be made to the Tribunal for a declaration, order, direction or recommendation about—
 - (a) any matter or question relating to—
 - (i) the scope of an attorney's powers under an enduring power of attorney; or
 - (ii) the exercise of any power by an attorney under an enduring power of attorney; or
 - (b) any other thing in or related to this Part.
- (2) An application may be made by—
 - (a) the Public Advocate; or
 - (b) the donor of the enduring power of attorney; or
 - (c) an attorney under the enduring power of attorney; or
 - (d) another person whom the Tribunal is satisfied has a special interest in the affairs of the donor.

125W Who is entitled to notice?

S. 125W
inserted by
No. 75/2003
s. 4.

- (1) Notice must be given under this section of—
 - (a) an application to the Tribunal under this Subdivision;
 - (b) the hearing of the application;
 - (c) any hearing of the Tribunal under this Subdivision in relation to an enduring power of attorney;

-
- (d) any order made by the Tribunal in respect of the application or an enduring power of attorney.
- (2) The persons entitled to notice are—
- (a) the Public Advocate;
 - (b) the donor of the enduring power of attorney;
 - (c) any attorney under the enduring power of attorney;
 - (d) any person specified in subsection (3) to whom the Tribunal directs that notice is to be given.
- (3) The Tribunal may direct that notice is to be given to—
- (a) the nearest relative of the donor;
 - (b) the primary carer (if any) of the donor;
 - (c) any guardian of the donor;
 - (d) any person appointed as alternative guardian of the donor under the **Guardianship and Administration Act 1986**;
 - (e) any administrator of the estate of the donor;
 - (f) any person who has a special interest in the affairs of the donor.
- (4) In this section *administrator*, *guardian*, *nearest relative* and *primary carer* have the same meanings as they have in the **Guardianship and Administration Act 1986**.

S. 125X
inserted by
No. 75/2003
s. 4.

125X General power of revocation of Tribunal

- (1) The Tribunal, on its own initiative or on an application under section 125V, may revoke the appointment of an attorney under an enduring power of attorney if the Tribunal is satisfied that it is in the best interests of the donor to do so.

- (2) Before making a decision under subsection (1), the Tribunal must be satisfied that the donor lacks the capacity to make an enduring power of attorney.

125Y Declaration of invalidity

S. 125Y
inserted by
No. 75/2003
s. 4.

- (1) The Tribunal, on its own initiative or on an application under section 125V, may declare an enduring power of attorney to be invalid if it is satisfied that—
- (a) the donor lacked capacity at the time the enduring power of attorney was made; or
 - (b) the enduring power of attorney does not comply with the requirements of this Part; or
 - (c) the enduring power of attorney is invalid for another reason, for example, the donor was induced to make it by dishonesty or undue influence.
- (2) If the Tribunal declares an enduring power of attorney invalid, the power is void from the start.

125Z Further powers of Tribunal

S. 125Z
inserted by
No. 75/2003
s. 4.

- (1) The Tribunal, on its own initiative or on an application under section 125V, may—
- (a) make a declaration or make recommendations or give any directions it considers necessary in relation to an enduring power of attorney;
 - (b) vary the effect of an enduring power of attorney;
 - (c) suspend for a specified period an enduring power of attorney, either generally or in respect of a specific matter;
 - (d) make any order it considers necessary in relation to an enduring power of attorney.

s. 125ZA

- (2) Without limiting subsection (1), the Tribunal, on its own initiative, may give directions to an attorney under an enduring power of attorney in respect of any matter.

S. 125ZA
inserted by
No. 75/2003
s. 4.

125ZA Advisory opinions

The Tribunal may give an advisory opinion on any matter relating to an enduring power of attorney that is referred to it by a person referred to in section 125V(2).

S. 125ZB
inserted by
No. 75/2003
s. 4.

125ZB Records and audit

- (1) In the case of an enduring power of attorney, the Tribunal may make an order that—
- (a) the attorney lodges with the Tribunal, accounts or other documents relating to the exercise of the power for a specified period; or
 - (b) the accounts be examined or audited by a person appointed by the Tribunal and that a copy of the person's report be given to the Tribunal and the applicant.
- (2) The Tribunal may make the order on its own initiative or on the application of the donor or the Public Advocate or another interested person.
- (3) The Tribunal may make an order about payment to a person appointed under subsection (1) of the costs of the examination or audit of accounts.

Subdivision 2—Rehearings

S. 125ZC
inserted by
No. 75/2003
s. 4.

125ZC Application for rehearing

- (1) If the Tribunal makes an order in respect of an application under Subdivision 1 (other than an order suspending an enduring power of attorney), a party or a person entitled to notice of the application may apply to the Tribunal for a rehearing of the application.

- (2) A person entitled to notice of the application who was not, or did not become, a party may apply for a rehearing only if the Tribunal gives leave.
- (3) Subsection (2) does not apply to the Public Advocate.
- (4) An application for a rehearing, or for leave to apply for a rehearing, must be made within 28 days after the day of the order.
- (5) If the Tribunal gives oral reasons for making an order and a party then requests written reasons under section 117 of the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which the written reasons are given to the party is deemed to be the day of the order for the purposes of subsection (4).
- (6) A person cannot apply for a rehearing of an application if—
 - (a) the order was made by the Tribunal constituted by the President, whether with or without others; or
 - (b) the application was for a rehearing or for leave to apply for a rehearing.

125ZD Parties and notice

- (1) A party to the proceeding on an application under Subdivision 1 is a party to a rehearing of the application under this Subdivision, in addition to any other parties.
- (2) A person who was entitled to notice of the making of an application under Subdivision 1 is entitled to notice of an application for a rehearing of the application under this Subdivision.

S. 125ZD
inserted by
No. 75/2003
s. 4.

s. 125ZE

S. 125ZE
inserted by
No. 75/2003
s. 4.

125ZE Rehearing

- (1) On an application under section 125ZC, the Tribunal must rehear the matter and, for that purpose, the Tribunal has all the functions and powers that the Tribunal had with respect to the matter at first instance.
- (2) In determining a rehearing, the Tribunal may—
 - (a) affirm the order of the Tribunal at first instance; or
 - (b) vary the order of the Tribunal at first instance; or
 - (c) set aside the order of the Tribunal at first instance and make another order in substitution for it.

S. 125ZF
inserted by
No. 75/2003
s. 4.

125ZF Effect of first instance order pending rehearing

- (1) Subject to subsection (2), the making of an application for a rehearing does not affect the operation of any order to which the application relates or prevent the taking of action to enforce the order.
- (2) The Tribunal may make an order staying the operation of an order pending the determination of the rehearing of the application to which the order relates.

Division 7—General

Subdivision 1—Proof of enduring power of attorney

S. 125ZG
inserted by
No. 75/2003
s. 4.

125ZG Proof of enduring power of attorney

- (1) An enduring power of attorney may be proved by a copy of the enduring power of attorney certified in accordance with this section and section 125ZH.

- (2) Each page, other than the last page, of the copy must be certified to the effect that the copy is a true and complete copy of the corresponding page of the original.
- (3) The last page of the copy must be certified to the effect that the copy is a true and complete copy of the original.

125ZH Who may certify the copy?

S. 125ZH
inserted by
No. 75/2003
s. 4.

- (1) Certification of a copy of an enduring power of attorney must be by one of the following persons—
 - (a) a justice of the peace;
 - (b) a legal practitioner;
 - (c) a public notary;
 - (d) any officer authorised by law to administer an oath;
 - (e) a financial services licensee;
 - (f) a regulated principal;
 - (g) a person of a prescribed class.
- (2) In this section—

financial services licensee means a financial services licensee (as defined in section 761A of the Corporations Act) whose licence covers dealing in securities;

regulated principal means a regulated principal (as defined in section 1430 of the Corporations Act) who is authorised by Subdivision D of Division 1 of Part 10.2 of that Act to deal in securities.

s. 125ZI

S. 125ZI
inserted by
No. 75/2003
s. 4.

125ZI Proof by certified copy of certified copy

- (1) If a copy of an enduring power of attorney has been certified in accordance with sections 125ZG and 125ZH, the enduring power of attorney may also be proved by a copy, certified in accordance with those sections, of the certified copy.
- (2) For the purposes of subsection (1), references in section 125ZG to the original power of attorney are to be taken to be references to the certified copy from which the further copy is made.

S. 125ZJ
inserted by
No. 75/2003
s. 4.

125ZJ Other forms of proof not affected

This Division does not prevent an enduring power of attorney being proved in any other way.

S. 125ZK
inserted by
No. 75/2003
s. 4.

125ZK References to enduring powers of attorney

In this Part a reference to an enduring power of attorney includes a reference to a copy of the enduring power of attorney that complies with the requirements of this Division.

Subdivision 2—Approval of forms

S. 125ZL
inserted by
No. 75/2003
s. 4.

125ZL Approved forms

- (1) The Secretary may approve forms for use under this Part.
- (2) The Secretary must publish in the Government Gazette any form approved under this Part.
- (3) If a document is required under this Part to be in the approved form, it is sufficient if the document is to the like effect of the approved form.

Subdivision 3—Regulations

S. 125ZM
inserted by
No. 75/2003
s. 4.

125ZM Regulations

The Governor in Council may make regulations for or with respect to any matter or thing that is authorised or required to be prescribed or

necessary to be prescribed for the purposes of this Part.

Division 8—Transitional

125ZN Saving for existing enduring powers of attorney

An enduring power of attorney under Part XI existing immediately before the commencement of the **Instruments (Enduring Powers of Attorney) Act 2003** has effect on and after that commencement as if the enduring power of attorney had been made under Division 2 of this Part.

S. 125ZN
inserted by
No. 75/2003
s. 4.

125ZO Existing powers of attorney from other jurisdictions

Section 116 applies to an enduring power of attorney whether made before or after the commencement of the **Instruments (Enduring Powers of Attorney) Act 2003**.

S. 125ZO
inserted by
No. 75/2003
s. 4.

125ZP Continuation of provisions relating to protected persons

(1) If—

(a) the donor of an enduring power of attorney was a protected person immediately before the commencement of the **Instruments (Enduring Powers of Attorney) Act 2003**; and

(b) the enduring power of attorney was in force immediately before that commencement—

the enduring power of attorney continues in force until it is revoked and the powers and duties of State Trustees under the **State Trustees (State Owned Company) Act 1994** in relation to the estates of protected persons do not apply in relation to the estate of the donor so long as the enduring power of attorney is effective.

S. 125ZP
inserted by
No. 75/2003
s. 4.

- (2) Despite subsection (1), until State Trustees has notice of an enduring power of attorney, any action taken by State Trustees under the **State Trustees (State Owned Company) Act 1994** in respect of the protected person is valid and effectual.
- (3) In this section *protected person* and *State Trustees* have the same meanings as they have in the **State Trustees (State Owned Company) Act 1994**.
-

**PART XII—MISCELLANEOUS PROMISES ETC. REQUIRED
TO BE IN WRITING**

126 Certain agreements to be in writing

- (1) An action must not be brought to charge a person upon a special promise to answer for the debt, default or miscarriage of another person or upon a contract for the sale or other disposition of an interest in land unless the agreement on which the action is brought, or a memorandum or note of the agreement, is in writing signed by the person to be charged or by a person lawfully authorised in writing by that person to sign such an agreement, memorandum or note.
- (2) It is declared that the requirements of subsection (1) may be met in accordance with the **Electronic Transactions (Victoria) Act 2000**.

No. 3706
s. 128.
S. 126
substituted by
No. 35/1987
s. 8,
amended by
No. 23/2004
s. 9 (ILA
s. 39B(1)).

S. 126(2)
inserted by
No. 23/2004
s. 9.

* * * * *

S. 127
repealed by
No. 35/1987
s. 8.

128 Representations of character

No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character conduct credit ability trade or dealings of any other person to the intent or purpose that such other person may obtain credit money or goods thereupon, unless such representation or assurance is made in writing signed by the party to be charged therewith.

No. 3706
s. 130.

s. 129

No. 3706
s. 131.

S. 129
amended by
No. 19/1989
s. 16(Sch.
item 29.6).

129 Consideration for guarantee need not appear in writing

No special promise by any person to answer for the debt default or miscarriage of another person, being in writing and signed by the party to be charged therewith or some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action to charge the person by whom such promise has been made, by reason only that the consideration for such promise does not appear in writing or by necessary inference from a written document.

No. 3706
s. 132.

130 Liability of members of unregistered companies

No action shall be brought whereby to charge any member of an unincorporated partnership or co-adventure established for mining purposes upon any simple contract made by or with any other member of such partnership or co-adventure on behalf of the same, unless such contract or some memorandum or note thereof is made or contained by or in some writing to be signed by the defendant in such action.

**PART XIII—CONTRACTS RELATING TO THE CARRIAGE
OF PASSENGERS BY WATER**

131 Definitions

No. 3706
s. 134.

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

condition includes any statement notice declaration by-law rule regulation advertisement clause covenant stipulation or agreement relating to a contract within the meaning of this Part or affecting in any way the terms of such a contract;

contract means contract made in Victoria for the carriage of any passenger by water from one place to another in Victoria; and includes any such contract oral or in writing or under seal and any token ticket or other evidence of such a contract;

owner includes the charterer master hirer lessee or agent of any ship;

ship includes boat or vessel or any means of conveyance or transit by water.

- (2) The construction of this Part shall not be affected by reason of the fact that it is included in an Act relating to instruments and securities.

132 Contracts for carriage of passengers by water

Where any contract within the meaning of this Part contains any condition (whether expressed or implied therein or incorporated therewith by notice declaration advertisement or otherwise) whereby—

- (a) the owner of any ship or the ship itself is relieved from liability for loss or damage to any passenger arising from the harmful or improper condition of the ship or arising from the negligence fault or failure of the

owner or the negligence fault or failure of his agents officers or servants in the management of the ship or in any matter incidental thereto; or

- (b) the obligations of the owner to exercise due diligence and to properly man manage equip and supply the ship and to make and keep the same reasonably fit for the carriage of passengers are in any wise lessened weakened or avoided—

that condition shall be illegal null and void and of no effect.

No. 3706
s. 136.

133 Contracting out not allowed

- (1) Any agreement contrary to this Part or purporting to lessen its effect in respect of any contract within the meaning of this Part or the incidents or evidence thereof shall be illegal null and void and of no effect.
- (2) Any condition requiring any person to waive and any agreement to waive compliance with this Part shall be illegal null and void and of no effect.

No. 3706
s. 137.

134 Construction and jurisdiction

All parties to any contract within the meaning of this Part shall be deemed to have intended to contract according to the laws in force in Victoria and any stipulation or agreement to the contrary or purporting to oust or lessen the jurisdiction of any court in respect of the contract or the incidents or evidence thereof shall be illegal null and void and of no effect.

135 Owners of ships not to insert illegal conditions in contracts

No. 3706
s. 138.

- (1) The owner of a ship shall not expressly or otherwise—
 - (a) insert in or incorporate with any contract within the meaning of this Part any condition declared by this Part to be illegal; or
 - (b) make or sign or execute any such contract or sell or supply or issue any ticket token or other evidence of such a contract containing incorporating or implying any condition declared by this Part to be illegal.
- (2) Every person guilty of a contravention of any of the provisions of this section shall be liable to a penalty of not more than 10 penalty units.

S. 135(2)
amended by
No. 9554
s. 2(2)(Sch. 2
item 102).

PART XIV—SUPPLEMENTARY

No. 6013
s. 7(1).

136 Validation of certain transactions in banking shares

All contracts agreements and tokens of sale and purchase made or entered into before the commencement of the **Instruments (Amendment) Act 1956** for the sale or transfer or purporting to be for the sale or transfer of any share or shares or of any stock or other interest in a banking company shall notwithstanding any non-compliance with the provisions of Part XIII of the **Instruments Act 1928** or any corresponding previous enactment have and be deemed to always have had the same operation and effect as they would have had if such Part or corresponding previous enactment had not been enacted.

No. 6013 s. 6.

137 Abolition of warrants of attorney

Any warrant of attorney to confess judgment in any personal action or cognovit actionem shall be void and of no effect.

No. 6013 s. 3.

138 Power to Registrar-General to destroy or dispose of documents

The Registrar-General may from time to time destroy or otherwise dispose of any instruments or documents, including copies of any instruments or documents, which under this Act or any corresponding previous enactment were required or authorized to be lodged left filed or deposited with the Registrar-General and which have by satisfaction or lapse of time or failure of renewal or otherwise ceased to be of any further force or effect for a period of not less than fifteen years.

138A Transitional provision

Despite section 14 of the **Interpretation of Legislation Act 1984**, any assignment or transfer of book debts existing at the commencement of Part 9 of the **Law and Justice Legislation (Further Amendment) Act 1997** which, before that commencement, was invalid only because it was not registered in accordance with Part IX of the **Instruments Act 1958** is deemed to have been registered under Part IX of that Act immediately before that commencement.

S. 138A
inserted by
No. 84/1997
s. 49.

139 Fees, searches and regulations

No. 6013 s. 4.

- (1) There shall be paid to the Registrar-General upon the lodging filing or registration of any document under this Act such fee as is prescribed.
- (2) Upon the payment of the prescribed fee any person may search any register book index or documents kept or filed pursuant to the provisions of this Act.
- (3) The Governor in Council may make regulations for or with respect to prescribing fees to be paid to the Registrar-General on the lodging filing registration or searching of any document under this Act.

S. 139(3)
amended by
No. 8198 s. 16.

* * * * *

S. 139(4)
repealed by
No. 6886 s. 3.

s. 141

Pt 15
(Heading and
ss 141–144)
inserted by
No. 74/2010
s. 16.

**PART XV—SAVINGS AND TRANSITIONAL PROVISIONS—
PERSONAL PROPERTY SECURITIES (STATUTE LAW
REVISION AND IMPLEMENTATION) ACT 2010**

Division 1—Definitions

141 Definitions

S. 141
inserted by
No. 74/2010
s. 16.

In this Part—

2010 Act means the **Personal Property Securities (Statute Law Revision and Implementation) Act 2010**;

commencement time means the commencement of section 15 of the 2010 Act;

current crop lien means an agreement to which section 61 applies that, immediately before the commencement time, was registered in accordance with that section;

current stock mortgage means a mortgage to which section 72 applies that, immediately before the commencement time, was registered in accordance with that section;

current wool lien means an agreement to which section 70 applies that, immediately before the commencement time, was registered in accordance with that section;

Registrar of Personal Property Securities has the same meaning as it has in the Personal Property Securities Act 2009 of the Commonwealth.

Division 2—Liens on Crops

142 Effect of repeal on existing liens

S. 142
inserted by
No. 74/2010
s. 16.

- (1) Despite the commencement of section 15 of the 2010 Act, the provisions of Part VII of the **Instruments Act 1958** (other than the part of

section 62 beginning with the words "After such agreement as aforesaid" and ending with the words "as against the original proprietor thereof who granted such lien."), as in force immediately before that commencement, are taken to continue to apply to a current crop lien until, in accordance with section 66—

- (a) the lien is removed from the records of the Registrar-General; or
- (b) satisfaction of the lien is entered on the records of the Registrar-General—

whichever occurs first.

Note

Chapter 9 of the Personal Property Securities Act 2009 of the Commonwealth provides for transitional arrangements for liens on crops relating to the priority of these interests.

- (2) An agreement executed before the commencement time that has not been (but could have been) registered in the office of the Registrar-General in accordance with section 61 immediately before the commencement time is taken to have effect as an agreement to which that section applies immediately before that time.

Division 3—Liens on wool and mortgages of stock

143 Effect of repeal on existing liens

Despite the commencement of section 15 of the 2010 Act, the provisions of Part VIII of the **Instruments Act 1958** (other than section 71), as in force immediately before that commencement, are taken to continue to apply to a current wool lien until, in accordance with section 79—

- (a) the lien is removed from the records of the Registrar-General; or

S. 143
inserted by
No. 74/2010
s. 16.

(b) satisfaction of the lien is entered on the records of the Registrar-General—

whichever occurs first.

Note

Chapter 9 of the Personal Property Securities Act 2009 of the Commonwealth provides for transitional arrangements for liens on wool relating to the priority of these interests.

- (2) An agreement executed before the commencement time that has not been (but could have been) registered in the office of the Registrar-General in accordance with section 70 immediately before the commencement time is taken to have effect as an agreement to which that section applies immediately before that time.

S. 144
inserted by
No. 74/2010
s. 16.

144 Effect of repeal on existing mortgages

- (1) Despite the commencement of section 15 of the 2010 Act, the provisions of Part VIII of the **Instruments Act 1958** (other than section 76), as in force immediately before that commencement, are taken to continue to apply to a current stock mortgage until the amount due or secured by the mortgage is paid or satisfied to the person entitled to receive or give a discharge for the mortgage.

Note

Chapter 9 of the Personal Property Securities Act 2009 of the Commonwealth provides for transitional arrangements for stock mortgages.

An amendment demand under Part 5.6 of the Personal Property Securities Act 2009 of the Commonwealth may be used to cause a migrated stock mortgage that has been discharged to be removed from the Personal Property Securities Register.

- (2) If a registered stock mortgage becomes a migrated security interest within the meaning of the Personal Property Securities Act 2009 of the Commonwealth, the date (if any) recorded in the Personal Property Securities Register established

under Chapter 5 of that Act as the date on which the interest was originally registered is, in the absence of evidence to the contrary, taken to be the date on which the interest was originally registered under this Act.

- (3) An agreement executed before the commencement time that has not been (but could have been) registered in the office of the Registrar-General in accordance with section 72 immediately before the commencement time is taken to have effect as an agreement to which that section applies immediately before that time.

Instruments Act 1958
No. 6279 of 1958

Sch. 1

SCHEDULES

Section 2.

FIRST SCHEDULE

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
3706	Instruments Act 1928	So much as is not already repealed.
3943	Statute Law Revision Act 1930	Item in Schedule referring to Instruments Act 1928 .
3998	Instruments Act 1931	The whole.
4191	Statute Law Revision Act 1933	Item in Schedule referring to Instruments Act 1928 .
4370	Instruments Act 1936	The whole.
4428	Hire-Purchase Agreements Act 1936	The whole.
4464	Instruments (Insurance Contracts) Act 1936	The whole.
4485	Statute Law Revision Act 1937	Item in Schedule referring to Instruments (Insurance Contracts) Act 1936 .
4608	Industrial Life Assurance Act 1938	The whole.
4636	Statute Law Revision Act 1939	Item in Schedule referring to Industrial Life Assurance Act 1938 .
4660	Instruments (Insurance Contracts) Act 1939	The whole.
4747	Ordinary Life Assurance Act 1940	The whole.
4773	Industrial Life Assurance Act 1940	The whole.
4840	Statute Law Revision Act 1941	Item in Schedule referring to Industrial Life Assurance Act 1940 .
4848	Powers of Attorney (War Service) Act 1941	The whole.
4990	Instruments (Insurance Contracts) Act 1943	The whole.

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<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
5741	Bookmakers Act 1953	Section 17.
5757	Statutes Amendment Act 1953	Section 7.
6013	Instruments (Amendment) Act 1956	The whole.

Sch. 2

SECOND SCHEDULE

Section 4.

Sch. 2
amended by
S.R. No.
375/1973
reg. 2(b),
Nos 9279 s. 2,
16/1986
s. 32(b)(i)(ii),
substituted by
No. 110/1986
s. 134(h),
amended by
Nos 35/1996
s. 453(Sch. 1
items 40.2,
40.3), 84/1997
s. 50, 24/2008
s. 79, 78/2008
s. 26.

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding YOU MUST GIVE NOTICE of your intention by first obtaining the leave of the Court to file an appearance and then filing an appearance within the proper time for appearance stated below.

YOU OR YOUR LEGAL PRACTITIONER may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office in the Law Courts, William Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to obtain the leave of the Court to file an appearance within the proper time and to file an appearance within that time, the plaintiff may ENTER JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME FOR OBTAINING LEAVE TO FILE AN APPEARANCE AND FOR FILING AN APPEARANCE is as follows—

- (a) where you reside within 80 kilometres of the post office corner of Bourke and Elizabeth Streets Melbourne, within 16 days after service;
- (b) where you reside beyond that distance, within 21 days after service.

IF you pay the amount claimed, namely, \$ and \$ for legal costs to the plaintiff or his legal practitioner within the proper time stated above, this proceeding will come to an end. Notwithstanding the payment you may have the costs assessed by the Costs Court.

APPLICATION FOR LEAVE TO DEFEND must be made within the proper time stated above to an Associate Judge of the Court, Law Courts, William Street, Melbourne. It is not necessary to give notice of the application to the plaintiff.

THE COURT MAY GIVE LEAVE TO DEFEND if you—

- (a) pay into Court the amount claimed, namely, \$; or
- (b) file affidavits satisfactory to the Court which disclose—
 - (i) facts which disclose a defence; or
 - (ii) such facts as would make it incumbent on the holder to prove consideration; or
 - (iii) such other facts as the Court considers sufficient to support the application.

FILED [*e.g.* 15 June, 19].

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

INDORSEMENT OF CLAIM

The plaintiff claims \$ principal and interest [*or* \$ balance of principal and interest] due to the plaintiff as the payee [*indorsee or bearer*] of a bill of exchange [*promissory note or order for the payment of money*] of which the following is a copy:

[Here copy bill and all indorsements on it]

Complete as follows:

1. Place of trial—

(if no place of trial is specified, trial will be in Melbourne.)
2. Mode of trial—

(if trial before a Judge and jury is not specified, trial will be before a Judge sitting alone.)
3. *This writ was filed—
 - (a) by the plaintiff in person;
 - (b) for the plaintiff by [*name or firm of legal practitioner*], legal practitioner, of [*business address of legal practitioner*];
 - (c) for the plaintiff by [*name or firm of legal practitioner*], legal practitioner, of [*business address of legal practitioner*] as agent for [*name or firm of principal legal practitioner*], legal practitioner, of [*business address of principal*].
4. The address of the plaintiff is—

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5. The address for service of the plaintiff is—

[Where the plaintiff sues by a legal practitioner, the address for service is the business address of the legal practitioner or, where the legal practitioner acts by an agent, the business address of the agent. Where the plaintiff sues without a legal practitioner, the address for service is stated in 4, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

6. The address of the defendant is—

*[Complete or strike out as appropriate.]

Sch. 3
repealed by
No. 110/1986
s. 134(i).

* * * * *

Schs 4, 5
repealed by
No. 9650
s. 27(1)(e).

* * * * *

Sch. 6
amended by
S.R. No.
375/1973
reg. 2(c),
repealed by
No. 74/2010
s. 15(2).

* * * * *

Sch. 7
repealed by
No. 74/2010
s. 15(4).

* * * * *

Sch. 8
repealed by
No. 74/2010
s. 15(5).

* * * * *

Schs 9–11
repealed by
No. 84/1997
s. 48(2).

* * * * *

SCHEDULE 12

GENERAL POWER OF ATTORNEY

Section 107
(1).
Sch. 12
substituted by
No. 9421 s. 3.

THIS GENERAL POWER OF ATTORNEY is made on the _____ day
of _____, 19____, by A.B. of _____
in pursuance of section 107(1) of the **Instruments Act 1958**.

1. I APPOINT C.D. of _____ (or C.R. of _____
and E.F. of _____
jointly (or jointly and severally)) to be my attorney(s).

2. I AUTHORIZE my attorney(s) to do on my behalf any thing that I may
lawfully authorize an attorney to do.

SIGNED SEALED AND DELIVERED by _____

* * * * *

Sch. 13
repealed by
No. 9421 s. 3,
new Sch. 13
inserted by
No. 9691 s. 4,
repealed by
No. 75/2003
s. 5.

* * * * *

Schs 14, 15
repealed by
No. 9421 s. 3.

* * * * *

Sch. 16
inserted by
No. 6438 s. 10,
repealed by
No. 9650
s. 27(1)(e).

ENDNOTES

1. General Information

The **Instruments Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 30 March 1959 p. 892.

2. Table of Amendments

This Version incorporates amendments made to the **Instruments Act 1958** by Acts and subordinate instruments.

Instruments (Bills of Sale) Act 1958, No. 6438/1958

Assent Date: 5.11.58
Commencement Date: 1.4.59: Government Gazette 18.3.59 p. 896
Current State: All of Act in operation

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

Hire-Purchase Act 1959, No. 6531/1959

Assent Date: 12.5.59
Commencement Date: 1.7.59: Government Gazette 19.6.59 p. 1763
Current State: All of Act in operation

Statute Law Revision Act 1962, No. 6867/1962

Assent Date: 16.4.62
Commencement Date: 16.4.62
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

Instruments (Corporate Bodies Contracts) Act 1967, No. 7547/1967

Assent Date: 17.3.67
Commencement Date: 1.7.67: Government Gazette 21.6.67 p. 2027
Current State: All of Act in operation

Instruments (Bills of Exchange Amendment) Act 1969, No. 7852/1969

Assent Date: 14.10.69
Commencement Date: 1.3.71: Government Gazette 27.1.71 p. 201
Current State: All of Act in operation

Instruments (Amendment) Act 1970, No. 7941/1970

Assent Date: 24.3.70
Commencement Date: 24.3.70
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

Instruments (Amendment) Act 1971, No. 8198/1971

Assent Date: 30.11.71
Commencement Date: 1.6.72: Government Gazette 19.4.72 p. 963
Current State: All of Act in operation

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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

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Instruments (Writs) Act 1979, No. 9279/1979

Assent Date: 10.7.79
Commencement Date: 10.7.79
Current State: All of Act in operation

Instruments (Powers of Attorney) Act 1980, No. 9421/1980 (as amended by No. 9549)

Assent Date: 20.5.80
Commencement Date: 1.7.80: Government Gazette 25.6.80 p. 2123
Current State: All of Act in operation

Penalties and Sentences Act 1981, No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 44 on 26.9.80 (but note ss 4, 9 of Act No. 9945); s. 1(3); ss 1, 36–46 on 3.6.81: Government Gazette 3.6.81 p. 1778; rest of Act on 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

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

Chattel Securities Act 1981, No. 9650/1981

Assent Date: 15.12.81
Commencement Date: Ss 1, 2(1)(2)(6), 13–21, 21A, 21B, 26 on 28.3.84; rest of Act on 2.4.84: Government Gazette 28.3.84 p. 941
Current State: All of Act in operation

Instruments (Enduring Powers of Attorney) Act 1981, No. 9691/1981

Assent Date: 5.1.82
Commencement Date: 3.3.82: Government Gazette 3.3.82 p. 604
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

Instruments (Bills of Exchange) Act 1983, No. 9947/1983

Assent Date: 27.9.83
Commencement Date: 27.9.83
Current State: All of Act in operation

Commercial Arbitration Act 1984, No. 10167/1984

Assent Date: 20.11.84
Commencement Date: 1.4.85: Government Gazette 20.2.85 p. 372
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: Ss 1–11, 13–27, 29–34 on 1.7.86: Government Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government Gazette 7.10.87 p. 2701
Current State: All of Act in operation

Guardianship and Administration Board Act 1986, No. 58/1986

Assent Date: 3.6.86
Commencement Date: S. 14 on 8.7.86: Government Gazette 25.6.86 p. 2179; Pt 1, ss 5, 6, 15–18, 75–82, Schs 1, 3 on 1.4.87: Government Gazette 25.3.87 p. 695; s. 58 on 1.4.87: Government Gazette 1.4.87 p. 778; rest of Act on 14.7.87: Government Gazette 8.7.87 p. 1792
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

Chattel Securities Act 1987, No. 15/1987

Assent Date: 12.5.87
Commencement Date: 1.8.87: Government Gazette 29.7.87 p. 1992
Current State: All of Act in operation

Sale of Goods (Vienna Convention) Act 1987, No. 35/1987

Assent Date: 12.5.87
Commencement Date: Pts 1, 3 on 12.5.87: s. 2(1); Pt 2 on 1.4.89: Government Gazette 22.3.89 p. 652
Current State: All of Act in operation

Conservation, Forests and Lands Act 1987, No. 41/1987

Assent Date: 19.5.87
Commencement Date: S. 103(Sch. 4 items 38.1, 38.2) on 1.7.87: Government Gazette 24.6.87 p. 1694
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Magistrates' Court (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

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Medical Treatment (Enduring Power of Attorney) Act 1990, No. 7/1990

Assent Date: 10.4.90
Commencement Date: 6.8.90: Government Gazette 1.8.90 p. 2288
Current State: All of Act in operation

Water (Further Amendment) Act 1994, No. 49/1994

Assent Date: 7.6.94
Commencement Date: Ss 1, 2 on 7.6.94: s. 2(1); s. 8 (*except* s. 8(a)(c)) on 1.7.92: s. 2(2); rest of Act on 1.7.94: s. 2(4)
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 40.1–40.3) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Law and Justice Legislation (Further Amendment) Act 1997, No. 84/1997

Assent Date: 2.12.97
Commencement Date: Ss 48–50 on 2.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 43) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

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

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 65) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Public Notaries Act 2001, No. 52/2001

Assent Date: 25.9.01
Commencement Date: S. 13(3) on 6.6.02: Government Gazette 30.5.02 p. 1118
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Auction Sales (Repeal) Act 2001, No. 84/2001

Assent Date: 11.12.01
Commencement Date: S. 6 on 1.1.03: s. 2(4)
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. item 9) on 23.4.02: s. 2
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

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Instruments (Enduring Powers of Attorney) Act 2003, No. 75/2003

Assent Date: 21.10.03
Commencement Date: Ss 3–5 on 1.4.04: Government Gazette 19.2.04 p. 333
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Transfer of Land (Electronic Transactions) Act 2004, No. 23/2004

Assent Date: 18.5.04
Commencement Date: S. 9 on 19.5.04: s. 2
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

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

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 51) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 16) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

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

Assent Date: 3.6.08
Commencement Date: S. 79 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 **Instruments Act 1958**

Racing and Gambling Legislation Amendment Act 2008, No. 73/2008

Assent Date: 25.11.08
Commencement Date: S. 31 on 1.1.09: Government Gazette 18.12.08 p. 2998
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

Courts Legislation Amendment (Costs Court and Other Matters) Act 2008, No. 78/2008

Assent Date: 11.12.08
Commencement Date: S. 26 on 31.12.09: s. 2(3)
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

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

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 28) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Instruments Act 1958**

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Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010

Assent Date: 19.10.10
Commencement Date: Ss 15, 16 on 30.1.12: Special Gazette (No. 423)
21.12.11 p. 3
Current State: This information relates only to the provision/s
amending the **Instruments Act 1958**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 46) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Instruments Act 1958**

Commercial Arbitration Act 2011, No. 50/2011

Assent Date: 18.10.11
Commencement Date: S. 46(Sch. item 10) on 17.11.11: Special Gazette
(No. 369) 15.11.11 p. 1
Current State: This information relates only to the provision/s
amending the **Instruments Act 1958**

Metric Conversion (Instruments Act) Regulations 1973, S.R. No. 375/1973

Date of Making: 18.12.73
Date of Commencement: 1.2.74: reg. 1

3. Explanatory Details

No entries at date of publication.