

## Authorised Version

### Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014

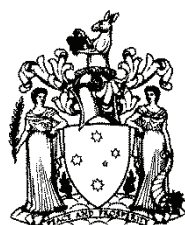
No. 25 of 2014

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**Authorised Version**



**Victoria**

**Justice Legislation Amendment  
(Discovery, Disclosure and Other  
Matters) Act 2014<sup>†</sup>**

**No. 25 of 2014**

[Assented to 8 April 2014]

**The Parliament of Victoria enacts:**

**PART 1—PRELIMINARY**

**1 Purposes**

The purposes of this Act are—

- (a) to amend the **Civil Procedure Act 2010** to provide for further case management powers in relation to discovery and disclosure; and

- 
- (b) to amend the **Corrections Act 1986** and the **Serious Sex Offenders (Detention and Supervision) Act 2009** in relation to the disclosure of information; and
  - (c) to make miscellaneous amendments to the **Corrections Amendment (Breach of Parole) Act 2013** and the **Crimes Act 1958**.

## 2 Commencement

- (1) This Act, except Part 2, comes into operation on the day after the day on which it receives the Royal Assent.
  - (2) Subject to subsection (3), Part 2 comes into operation on a day or days to be proclaimed.
  - (3) If a provision of Part 2 does not come into operation before 31 October 2014, it comes into operation on that day.
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**PART 2—CIVIL PROCEDURE DISCOVERY AND  
DISCLOSURE AMENDMENTS**

**3 Principal Act**

In this Part, the **Civil Procedure Act 2010** is called the Principal Act.

See:  
Act No.  
47/2010.  
Reprint No. 1  
as at  
22 July 2013  
and  
amending  
Act Nos  
47/2010 and  
67/2013.  
LawToday:  
www.  
legislation.  
vic.gov.au

**4 Definitions**

In section 3 of the Principal Act **insert** the following definitions—

**"affidavit of document management** means an affidavit prepared under section 55B;

**statement of issues** means a statement—

- (a) prepared by parties to a proceeding under section 50(1); or
- (b) settled by a court under section 50(2);".

**5 New sections 50 and 50A inserted**

After section 49 of the Principal Act **insert**—

**"50 Statement of issues**

- (1) Without limiting any other power of a court under this Part, a court may order or direct that parties to a proceeding consult and prepare a statement of issues which identifies and summarises the key issues in dispute in the proceeding.

- (2) The court may settle the contents of the statement of issues ordered or directed to be prepared under subsection (1) if the parties are unable to agree on the contents of the statement.

**50A Use of statement of issues**

- (1) The court may use a statement of issues in a proceeding in any manner the court considers appropriate to further the overarching purpose in relation to the following—
- (a) pre-trial procedures;
  - (b) the conduct of the proceeding at trial.
- (2) Without limiting subsection (1), a statement of issues may be used for the purpose of discovery of documents.
- (3) A statement of issues does not displace the function of any pleadings in the proceeding."

**6 Court orders for discovery**

- (1) In section 55(2)(c) of the Principal Act—
- (a) in subparagraph (ii) for "dispute;" **substitute** "dispute; or";
  - (b) after subparagraph (ii) **insert**—  
"(iii) some or all of the issues set out in a statement of issues filed in the proceeding;"
- (2) After section 55(3) of the Principal Act **insert**—
- "(4) A court may order or direct a party to pay to another party an amount specified or determined by, or in accordance with, the order or direction in relation to the costs of discovery in any manner considered

appropriate by the court, including, but not limited to, payment in advance of an amount to the other party for some or all of the estimated costs of discovery.

- (5) Without limiting any other power of a court to make costs orders, a court may order or direct that costs payable under an order or a direction under subsection (4) are recoverable as costs in the proceeding."

**7 New sections 55A to 55C inserted**

After section 55 of the Principal Act **insert—**

**"55A Provision of all documents in party's possession to other party by consent**

- (1) Subject to subsection (2), if all parties to a proceeding consent, a court may order or direct a party to provide all documents in the party's possession or control which relate to the issues in the proceeding to any other party on the basis that privilege is not waived.
- (2) The court may make an order or give a direction under subsection (1) if satisfied that—
- (a) giving the receiving party access to the documents is not likely to give rise to any substantial prejudice to the party providing the documents; and
  - (b) the documents can be identified and located without unreasonable cost to the party providing the documents; and
  - (c) the documents are able to be identified by a general description or category.

- (3) An order or direction under subsection (1) may—
- (a) specify that the documents are to be provided—
    - (i) in a searchable electronic format, if practicable; or
    - (ii) in any other manner or format that the court considers appropriate; and
  - (b) include any other order or direction that the court thinks fit, including, but not limited to, any order or direction in relation to the maintenance of privilege claims.
- (4) Subject to subsection (5), if an order is made or a direction is given under subsection (1), the party providing documents to which the order or direction applies, at that party's own expense, may exclude any privileged documents prior to providing the documents to the other party in accordance with the order or direction.
- (5) A party who excludes any privileged documents in accordance with subsection (4) must provide to the other party a list of the documents for which privilege is claimed which specifies the grounds on which privilege is claimed.
- (6) An order or a direction under subsection (1) may apply to documents whether or not those documents are required to be discovered in accordance with any rules of court.
- (7) Nothing in this section limits any other power of a court under this Part or the rules of court.



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**55B Affidavit of document management**

- (1) For the purpose of assisting a court to make any appropriate orders or directions in relation to discovery, the court may order or direct that a party provide to the court an affidavit of document management.
- (2) An affidavit of document management may include the following—
  - (a) the volume, manner of arrangement or storage, type or location of discoverable documents;
  - (b) the party's processes of document management.
- (3) An affidavit of document management is in addition to any affidavit of documents which may be required in any proceeding.

**55C Order for oral examination**

- (1) A court may order that the deponent of an affidavit of document management be subject to oral examination in relation to the affidavit of document management.
- (2) A court may order that an appropriate person (other than the deponent of an affidavit of document management) who is able to provide information in relation to the matters dealt with in the affidavit of document management be subject to oral examination in relation to those matters.
- (3) An order under subsection (1) or (2) may—
  - (a) specify the time, place and manner of conducting the examination; and
  - (b) specify whether the oral examination is to be conducted by—
    - (i) the court; or

- (ii) the court constituted by a judicial officer other than the judicial officer constituting the court that made the order; and
  - (c) specify who is to pay the costs of the oral examination in the first instance; and
  - (d) include any other orders or directions that the court considers appropriate.
- (4) Nothing in this section limits section 57 or any other powers of a court in relation to oral examination."

**8 New Division 3 of Part 6.2 of Chapter 6 inserted**

After Division 2 of Part 6.2 of Chapter 6 of the Principal Act insert—

**"Division 3—Transitional provisions—Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014**

**85 Application of amendments made by Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014**

- (1) The amendments made to this Act by the **Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014** apply in relation to all civil proceedings commenced on or after the commencement of Part 2 of that Act.
- (2) If a civil proceeding has commenced before the amendment of Part 4.2 of Chapter 4 by Part 2 of the **Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014**, on and from the commencement of Part 2 of that Act, Part 4.2

of Chapter 4 as amended by that Act applies in relation to that proceeding.

- (3) If a civil proceeding has commenced before the amendment of Part 4.3 of Chapter 4 by Part 2 of the **Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014**, on and from the commencement of Part 2 of that Act, Part 4.3 of Chapter 4 as amended by that Act applies in relation to that proceeding.

**86 Power to resolve transitional difficulties in proceeding**

- (1) If any difficulty arises because of the operation of this Division or any amendments made to this Act by the **Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014** in relation to a proceeding to which this Division applies, a court may make any order it considers appropriate to resolve the difficulty.
- (2) An order made under subsection (1)—
- (a) may be made on application of a party to the proceeding or on the court's own motion, as the case requires; and
  - (b) has effect despite any provision to the contrary made by or under any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**).

**87 Regulations dealing with transitional matters**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a

result of the enactment of Part 2 of the  
**Justice Legislation Amendment  
(Discovery, Disclosure and Other Matters)  
Act 2014.**

- (2) Regulations made under this section may—
- (a) have a retrospective effect to a day on or from the date that the **Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014** receives the Royal Assent; and
  - (b) be of limited or general application; and
  - (c) differ according to differences in time, place or circumstances; and
  - (d) leave any matter or thing to be decided by a specified person or specified class of persons; and
  - (e) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations made under this section have effect despite anything to the contrary—
- (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
  - (b) in any subordinate instrument.
- (4) This section is **repealed** on the second anniversary of the day on which it comes into operation."

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**9 Rules of Court—Supreme Court Act 1986**

After section 25(1)(ad) of the **Supreme Court Act 1986 insert—**

"(ada) discovery and disclosure;"

**10 Power to make rules of practice—County Court Act 1958**

After section 78(1)(aac) of the **County Court Act 1958 insert—**

"(aaca) discovery and disclosure;"

**11 Rules of Court—Magistrates' Court Act 1989**

After section 16(1)(ad) of the **Magistrates' Court Act 1989 insert—**

"(ada) discovery and disclosure;"

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**PART 3—OTHER JUSTICE LEGISLATION AMENDMENTS**

**Division 1—Corrections Act 1986**

**12 New section 110 of the Corrections Act 1986  
inserted**

See:  
Act No.  
117/1986.  
Reprint No. 10  
as at  
20 November  
2013  
and  
amending  
Act Nos  
46/2013,  
67/2013,  
72/2013 and  
76/2013.  
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vic.gov.au

After section 109 of the **Corrections Act 1986**  
**insert—**

**"110 Disclosure of certain information is not  
breach of section 4 of Judicial Proceedings  
Reports Act 1958**

Section 4 of the **Judicial Proceedings  
Reports Act 1958** does not prevent a  
disclosure of information, including the  
identity of a victim, that is made for the  
purposes of the administration of this Act or  
of an order made under this Act or an order  
or sentence made or imposed by a court  
under the **Sentencing Act 1991** or for the  
purposes of an application for an order under  
this Act or the **Sentencing Act 1991**."

**Division 2—Corrections Amendment (Breach of Parole)  
Act 2013**

**13 Section 3 of the Corrections Amendment (Breach of  
Parole) Act 2013 amended**

See:  
Act No.  
46/2013.  
Statute Book:  
www.  
legislation.  
vic.gov.au

- (1) In section 3 of the **Corrections Amendment  
(Breach of Parole) Act 2013**, in proposed  
section 78B(2) of the **Corrections Act 1986**, after  
"subsection (1)" **insert** ", or under any power of  
arrest that a member of the police force has under  
any Act or law if the prisoner is suspected on  
reasonable grounds of committing an offence  
against section 78A,".

(2) In section 3 of the **Corrections Amendment (Breach of Parole) Act 2013**, in proposed section 78B(3) of the **Corrections Act 1986**, after "subsection (1)" **insert** ", or under any power of arrest that a member of the police force has under any Act or law if the prisoner is suspected on reasonable grounds of committing an offence against section 78A,".

(3) In section 3 of the **Corrections Amendment (Breach of Parole) Act 2013**, after proposed section 78B(4) of the **Corrections Act 1986** **insert**—

"(5) If a person was arrested under any Act or law, nothing in this section prevents the continuation of the person's detention in relation to the offences for which the person was arrested."

(4) In section 3 of the **Corrections Amendment (Breach of Parole) Act 2013**, at the foot of proposed section 78C of the **Corrections Act 1986** **insert**—

**"Note**

Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1986** contains further provisions that apply to prisoners taken into custody, including prisoners detained under section 78B or 78C."

(5) In section 3 of the **Corrections Amendment (Breach of Parole) Act 2013**, for proposed section 78D of the **Corrections Act 1986** **substitute**—

**"78D Application of certain provisions of the Crimes Act 1958 and the Bail Act 1977**

(1) If—

- (a) a prisoner is detained under section 78B(2) or (3) or an order made under section 78C(1)(a); and

- (b) a decision or order is made for the purposes of section 464A(1)(a) or (b) of the **Crimes Act 1958** to release the prisoner—

the decision or order is subject to the condition that the prisoner must not be released before the relevant day and section 464A of the **Crimes Act 1958** applies accordingly.

- (2) If—

- (a) a prisoner is detained under section 78B(2) or (3) or an order made under section 78C(1)(a); and
- (b) after the prisoner is brought before a bail justice or the Magistrates' Court under section 464A(1)(c) of the **Crimes Act 1958**, a decision or order is made to release the prisoner—

the decision or order is subject to the condition that the prisoner must not be released before the relevant day and section 464A of the **Crimes Act 1958** applies accordingly.

- (3) If—

- (a) a prisoner is detained under section 78B(2) or (3) or an order made under section 78C(1)(a); and
- (b) the prisoner is granted bail under section 4 of the **Bail Act 1977**—

the order granting bail is subject to the condition that the prisoner must not be released on bail before the relevant day and the **Bail Act 1977** applies accordingly.



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- (4) An investigation or questioning by a member of the police force under section 464A of the **Crimes Act 1958** of a prisoner detained under section 78B(2) or (3) or an order made under section 78C(1)(a) may continue for a reasonable time after the prisoner is detained even if the Board cancels the prisoner's parole during that time.
- (5) Section 464B of the **Crimes Act 1958** does not apply in relation to the prisoner until the reasonable time referred to in subsection (4) has elapsed.
- (6) In this section, *the relevant day* means—
- (a) the day on which the Board, after considering the breach of the term or condition of the prisoner's parole under section 78C(3), decides not to cancel the prisoner's parole; or
  - (b) the day on which the Board makes an order under section 78C(1)(b).
- (7) In determining what constitutes a reasonable time for the purposes of subsections (4) and (5), the matters set out in section 464A(4) of the **Crimes Act 1958** may be considered."

### **Division 3—Crimes Act 1958**

#### **14 Detention of person in custody**

See:  
Act No.  
6231.  
Reprint No. 24  
as at  
1 July 2013  
and  
amending  
Act Nos  
16/2004,  
27/2011,  
60/2013,  
70/2013,  
72/2013 and  
77/2013.  
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vic.gov.au

At the foot of section 464A of the **Crimes Act 1958 insert—**

**"Note**

Section 78D of the **Corrections Act 1986** provides for the application of section 464A in relation to persons detained under that Act."

#### **15 Questioning or investigation of person already held for another matter**

At the foot of section 464B of the **Crimes Act 1958 insert—**

**"Note**

Section 78D of the **Corrections Act 1986** provides for the application of section 464B in relation to persons detained under that Act."

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**Division 4—Serious Sex Offenders (Detention and  
Supervision) Act 2009**

**16 New section 192A of the Serious Sex Offenders  
(Detention and Supervision) Act 2009 inserted**

After section 192 of the **Serious Sex Offenders  
(Detention and Supervision) Act 2009** insert—

**"192A Disclosure of certain information is not  
breach of section 4 of Judicial Proceedings  
Reports Act 1958**

Section 4 of the **Judicial Proceedings  
Reports Act 1958** does not prevent a  
disclosure of information, including the  
identity of a victim, that is made for the  
purposes of the administration of this Act or  
of an order made under this Act or an order  
or sentence made or imposed by a court  
under the **Sentencing Act 1991** or for the  
purposes of an application for an order under  
this Act or the **Sentencing Act 1991**."

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See:  
Act No.  
91/2009.  
Reprint No. 1  
as at  
27 June 2012  
and  
amending  
Act Nos  
65/2012,  
32/2013,  
70/2013 and  
76/2013.  
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**PART 4—REPEAL OF AMENDING ACT**

**17 Repeal of amending Act**

This Act is **repealed** on 31 October 2015.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## ENDNOTES

- † *Minister's second reading speech—*  
*Legislative Assembly: 6 February 2014*  
*Legislative Council: 27 March 2014*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Civil Procedure Act 2010** to provide for further case management powers in relation to discovery and disclosure, to consequentially amend other Acts, to amend the **Corrections Act 1986**, the **Corrections Amendment (Breach of Parole) Act 2013**, the **Crimes Act 1958** and the **Serious Sex Offenders (Detention and Supervision) Act 2009** and for other purposes."