

**Authorised Version No. 161**  
**Magistrates' Court Act 1989**

**No. 51 of 1989**

Authorised Version incorporating amendments as at  
16 January 2012

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**Authorised Version No. 161**  
**Magistrates' Court Act 1989**

**No. 51 of 1989**

Authorised Version incorporating amendments as at  
16 January 2012

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purposes**

The main purposes of this Act are—

- (a) to establish the Magistrates' Court of Victoria; and
- (b) to amend and consolidate for the purposes of the new Court the law relating to the jurisdiction and procedure of Magistrates' Courts; and
- (c) to provide for the fair and efficient operation of the Magistrates' Court; and
- (d) to abolish inefficient and unnecessary court process and procedures; and
- (e) to allow for the Magistrates' Court to be managed in a way that will ensure—
  - (i) fairness to all parties to court proceedings; and
  - (ii) the prompt resolution of court proceedings; and
  - (iii) that optimum use is made of the Court's resources.

**2 Commencement**

This Act comes into operation on a day or days to be proclaimed.

### 3 Definitions

(1) In this Act—

S. 3(1) def. of  
*Aboriginal  
elder or  
respected  
person*  
inserted by  
No. 27/2002  
s. 4.

*Aboriginal elder or respected person* means a person who holds office as an Aboriginal elder or respected person under section 17A;

S. 3(1) def. of  
*Aborigine*  
inserted by  
No. 27/2002  
s. 4.

*Aborigine* means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander; and
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community;

S. 3(1) def. of  
*accused*  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 82.1).

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

S. 3(1) def. of  
*appropriate  
dispute  
resolution*  
inserted by  
No. 47/2010  
s. 88(b).

*appropriate dispute resolution* has the same meaning as it has in the **Civil Procedure Act 2010**;

S. 3(1) def. of  
*appropriate  
registrar*  
substituted by  
No. 64/1996  
s. 24(a),  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.2(a)).

*appropriate registrar* means—

- (a) the registrar at the proper venue of the Court; or
- (b) the registrar at the venue of the Court at which a proceeding is heard and determined in accordance with an order made under section 31 of the **Criminal Procedure Act 2009**;

***Assessment and Referral Court List*** means the list established by section 4S;

S. 3(1) def. of ***Assessment and Referral Court List*** inserted by No. 12/2010 s. 4(1).

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

S. 3(1) def. of ***authorised deposit-taking institution*** inserted by No. 11/2001 s. 3(Sch. item 44.1(a)).

\* \* \* \* \*

S. 3(1) def. of ***bank*** repealed by No. 11/2001 s. 3(Sch. item 44.1(b)).

\* \* \* \* \*

S. 3(1) def. of ***chief administrator*** repealed by No. 46/1998 s. 7(Sch. 1).

***civil registry court*** means a venue of the Court that is prescribed by the Rules to be a civil registry court;

\* \* \* \* \*

S. 3(1) def. of ***committal mention date*** inserted by No. 34/1990 s. 4(Sch. 3 item 1), substituted by No. 10/1999 s. 8(1), repealed by No. 7/2009 s. 427(1)(a) (as amended by No. 68/2009 s. 54(m)).

**complaint** includes any process by which a civil proceeding in the Court is commenced;

**conduct money** means a sum of money or its equivalent sufficient to meet the reasonable expenses of a person to whom a witness summons is directed of complying with the summons in relation to the day on which the person is required by the summons to attend;

**Court** means the Magistrates' Court of Victoria;

**court official** means—

- (a) the principal registrar of the Court; or
- (b) a registrar or deputy registrar of the Court; or
- (c) any person employed in any of the offices of the Court;

**defendant** means—

- \* \* \* \* \*
- (b) a person against whom a civil proceeding has been commenced in the Court;

**Department** means the Department of Justice;

\* \* \* \* \*

**designated place** has the same meaning as it has in section 118D of the **Police Regulation Act 1958**;

S. 3(1) def. of **defendant** amended by No. 68/2009 s. 97(Sch. item 82.2(b)).

S. 3(1) def. of **Department** substituted by No. 46/1998 s. 7(Sch. 1).

S. 3(1) def. of **depositions** repealed by No. 7/2009 s. 427(1)(a) (as amended by No. 68/2009 s. 54(m)).

S. 3(1) def. of **designated place** inserted by No. 43/2011 s. 34.

*driver licence* has the same meaning as in the  
**Road Safety Act 1986;**

\* \* \* \* \*

S. 3(1) def. of  
*election date*  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.2(c)).

*execution copy*, in relation to a warrant, means the  
copy issued for the purposes of execution;

*family member* has the meaning given by  
section 3A;

S. 3(1) def. of  
*family  
member*  
inserted by  
No. 27/2002  
s. 4.

*family violence* has the meaning given by the  
**Family Violence Protection Act 2008;**

S. 3(1) def. of  
*family  
violence*  
inserted by  
No. 77/2004  
s. 3(1),  
substituted by  
No. 52/2008  
s. 251(1).

*fine* includes any penalties, forfeitures, sums of  
money and costs ordered to be paid by the  
person fined;

\* \* \* \* \*

S. 3(1) def. of  
*hearing date*  
repealed by  
No. 7/2009  
s. 427(1)(a) (as  
amended by  
No. 68/2009  
s. 54(m)).

*homeless person* means—

- (a) a person living in—
- (i) crisis accommodation; or
  - (ii) transitional accommodation; or

S. 3(1) def. of  
*homeless  
person*  
inserted by  
No. 51/2006  
s. 3(1).

- (iii) any other accommodation provided under the Supported Accommodation Assistance Act 1994 of the Commonwealth; or
- (b) a person who has inadequate access to safe and secure housing within the meaning of section 4 of the Supported Accommodation Assistance Act 1994 of the Commonwealth;

S. 3(1) def. of *informant* repealed by No. 7/2009 s. 427(1)(a) (as amended by No. 68/2009 s. 54(m)).

\* \* \* \* \*

S. 3(1) def. of *Infringements Court* inserted by No. 12/2006 s. 169(b).

*Infringements Court* means the venue of the Court prescribed by the rules made under section 16(1A)(m);

S. 3(1) def. of *infringements registrar* inserted by No. 12/2006 s. 169(b).

*infringements registrar* has the same meaning as it has in the **Infringements Act 2006**;

S. 3(1) def. of *infringement warrant* inserted by No. 12/2006 s. 169(b).

*infringement warrant* has the same meaning as it has in the **Infringements Act 2006**;

S. 3(1) def. of *intellectual disability* inserted by No. 12/2010 s. 4(1).

*intellectual disability* has the same meaning as it has in the **Disability Act 2006**;

*judicial registrar* means a judicial registrar of the Court appointed under section 16C;

S. 3(1) def. of *judicial registrar* inserted by No. 19/2005 s. 3.

*judicial resolution conference* has the same meaning as it has in the **Civil Procedure Act 2010**;

S. 3(1) def. of *judicial resolution conference* inserted by No. 50/2009 s. 12, amended by No. 34/2010 s. 49(1), substituted by No. 47/2010 s. 88(a).

*jurisdictional limit* in a civil proceeding means \$100 000;

S. 3(1) def. of *jurisdictional limit* substituted by No. 64/1996 s. 24(b), amended by No. 68/2004 s. 3.

*Koori Court officer* means a person who—

- (a) is employed under Part 3 of the **Public Administration Act 2004**; and
- (b) exercises powers or performs functions in relation to the Koori Court Division of the Court;

S. 3(1) def. of *Koori Court officer* inserted by No. 27/2002 s. 4, amended by No. 108/2004 s. 117(1) (Sch. 3 item 118.1).

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

S. 3(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 63.1).

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S. 3(1) def. of  
*magistrate*  
inserted by  
No. 36/2007  
s. 3(1).

*magistrate* includes an acting magistrate;

S. 3(1) def. of  
*mental illness*  
inserted by  
No. 12/2010  
s. 4(1).

*Magistrates' Court* means the Magistrates' Court  
of Victoria;

*mental illness* has the same meaning as it has in  
the **Mental Health Act 1986**;

S. 3(1) def. of  
*mention court*  
amended by  
No. 64/1996  
s. 24(c).

*mention court* means a venue of the Court that is  
nominated by the Chief Magistrate under  
section 5A as a mention court;

S. 3(1) def. of  
*mention date*  
repealed by  
No. 7/2009  
s. 427(1)(a) (as  
amended by  
No. 68/2009  
s. 54(m)).

\* \* \* \* \*

*motor vehicle* has the same meaning as in the  
**Road Safety Act 1986**;

S. 3(1) def. of  
*Neighbour-  
hood Justice  
officer*  
inserted by  
No. 51/2006  
s. 3(1).

*Neighbourhood Justice officer* means a person  
who—

- (a) is employed under Part 3 of the **Public Administration Act 2004**; and
- (b) exercises powers or performs functions  
in relation to the Neighbourhood  
Justice Division of the Court;

*order* includes judgment and conviction;

S. 3(1) def. of  
*part-time  
magistrate*  
inserted by  
No. 31/2004  
s. 3.

*part-time magistrate* means a magistrate who—

- (a) is appointed on a part-time basis under  
section 7; or
- (b) has entered into an agreement with the  
Chief Magistrate under section 13(3);

*party*, to a proceeding for a family violence intervention order under the **Family Violence Protection Act 2008** or a proceeding for an offence against that Act, includes, in sections 4J and 4K, an affected family member within the meaning of that Act;

S. 3(1) def. of *party* inserted by No. 77/2004 s. 3(1), substituted by No. 52/2008 s. 251(1).

*plaintiff* means a person who commences a civil proceeding in the Court;

*police gaol* has the same meaning as in the **Corrections Act 1986**;

*prescribed* means prescribed by the regulations unless required to be prescribed by rules of court;

S. 3(1) def. of *prescribed* amended by No. 68/2009 s. 97(Sch. item 82.2(d)).

*principal registrar* means principal registrar of the Court;

*prison* has the same meaning as in the **Corrections Act 1986**;

*prison officer* has the same meaning as in the **Corrections Act 1986**;

S. 3(1) def. of *prison officer* inserted by No. 34/1990 s. 4(Sch. 3 item 2).

*probationary driver licence* has the same meaning as in the **Road Safety Act 1986**;

*proceeding* means any matter in the Court, including a committal proceeding, but does not include the exercise by a registrar of any jurisdiction, power or authority vested in the registrar as infringements registrar;

S. 3(1) def. of *proceeding* amended by No. 12/2006 s. 169(a).

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S. 3(1) def. of *process* amended by Nos 33/1994 s. 4, 48/2006 s. 42(Sch. item 22.1(a)), 87/2009 s. 60(1).

*process* includes witness summons, charge-sheet, summons to answer to a charge, complaint, warrant to arrest, remand warrant, search warrant, warrant to seize property, infringement warrant, warrant to imprison, warrant to detain in a youth justice centre, warrant of delivery and any other process by which a proceeding in the Court is commenced;

S. 3(1) def. of *proper venue* amended by Nos 64/1996 s. 24(d), 77/2004 s. 3(2)(a)–(c), 51/2006 s. 3(2)(a)–(c), 52/2008 s. 251(2), 68/2008 s. 78, 68/2009 s. 97(Sch. item 82.2(e)), 12/2010 s. 4(2), 53/2010 s. 221(Sch. item 7.1).

*proper venue*—

- (a) subject to paragraphs (c), (dc) and (e), in relation to a criminal proceeding or a class of criminal proceeding, means the mention court that has been nominated by the Chief Magistrate under section 5A for the proceeding or class of proceeding, but in the absence of any such nomination is the mention court that is nearest to—
- (i) the place where the offence is alleged to have been committed; or
  - (ii) the place of residence of the accused; and
- (b) subject to paragraphs (c) and (e), in relation to a civil proceeding, means the civil registry court that is nearest to—
- (i) the place where the subject-matter of the complaint arose; or
  - (ii) the place of residence of the defendant; and

\* \* \* \* \*

- 
- (c) in relation to a proceeding in respect of which the Family Violence Court Division has jurisdiction (other than an interim order under the **Family Violence Protection Act 2008**), means—
- (i) a venue of the Court at which the Family Violence Court Division may sit and act but only if at least one of the following places is within a postcode area specified, in relation to that venue, by the Minister by notice published in the Government Gazette—
    - (A) the place where the family violence the subject of the proceeding is alleged to have been committed;
    - (B) the place of residence of the accused, defendant or respondent (within the meaning of the **Family Violence Protection Act 2008**);
    - (C) the place of permanent or temporary residence of the person against whom the family violence is alleged to have been committed; or
  - (ii) if subparagraph (i) does not apply, the mention court or civil registry court determined under paragraph (a) or (b) (as the case may be); and

- 
- (d) in relation to a proceeding for an interim order under the **Family Violence Protection Act 2008** or the **Personal Safety Intervention Orders Act 2010** means any civil registry court; and
- (da) in relation to a proceeding under the **Family Violence Protection Act 2008**, means—
- (i) a venue of the Court determined in accordance with paragraph (c), (d) or (e); or
  - (ii) the civil registry court which the Court determines is the most appropriate venue for the matter, having regard to the following—
    - (A) the safety of the parties;
    - (B) the need to prevent disclosure of a party's whereabouts;
    - (C) the ability of the parties to attend a particular venue of the court, taking into account their places of work, residence or any childcare requirements;
    - (D) the availability of family violence support services at particular venues of the Court;
    - (E) the need to manage case flow;
    - (F) any other considerations the Court thinks relevant; and

- 
- (db) in relation to a proceeding under the **Personal Safety Intervention Orders Act 2008**, means—
- (i) a venue of the court determined in accordance with paragraph (d) or (e); or
  - (ii) the civil registry court that the Court determines is the most appropriate venue for the matter, having regard to the following—
    - (A) the safety of the parties;
    - (B) the need to prevent disclosure of a party's whereabouts;
    - (C) the ability of the parties to attend a particular venue of the court, taking into account their places of work, residence or any childcare requirements;
    - (D) the availability of mediation assessment services at particular venues of the Court;
    - (E) the need to manage case flow;
    - (F) any other considerations the Court thinks relevant; and
- (dc) in relation to a proceeding in respect of which the Assessment and Referral Court List has jurisdiction—
- (i) a venue of the Court determined in accordance with paragraph (a), (b), (c) or (d); or

- (ii) a venue of the Court at which the Assessment and Referral Court List may sit and act;
- (e) in relation to a proceeding in respect of which the Neighbourhood Justice Division has jurisdiction—
  - (i) a venue of the Court determined in accordance with paragraph (a), (b), (c) or (d); or
  - (ii) a venue of the Court at which the Neighbourhood Justice Division may sit and act;

S. 3(1) def. of *protective services officer* inserted by No. 43/2011 s. 34.

*protective services officer* means a protective services officer appointed under section 118B(1) of the **Police Regulation Act 1958**;

S. 3(1) def. of *registered valuer* repealed by No. 91/1994 s. 36(7)(a).

\* \* \* \* \*

S. 3(1) def. of *return date* repealed by No. 68/2009 s. 97(Sch. item 82.2(f)).

*registrar* means registrar of the Court;

\* \* \* \* \*

S. 3(1) def. of *Secretary* inserted by No. 46/1998 s. 7(Sch. 1).

*Secretary* means the Secretary to the Department of Justice;

*Secretary to the Department of Health* means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health;

S. 3(1) def. of *Secretary to the Department of Health* inserted by No. 29/2010 s. 63(1).

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

S. 3(1) def. of *sentence* inserted by No. 68/2009 s. 97(Sch. item 82.1).

\* \* \* \* \*

S. 3(1) def. of *sentencing order* amended by Nos 49/1991 s. 119(7) (Sch. 4 item 13.1), 48/1997 s. 64, 65/2004 s. 4(2), 80/2005 s. 19, 93/2005 s. 10, 30/2009 s. 196, repealed by No. 7/2009 s. 427(1)(a) (as amended by No. 68/2009 s. 54(m)).

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

S. 3(1) def. of *sexual offence* inserted by No. 8/1991 s. 12, repealed by No. 7/2009 s. 427(1)(a) (as amended by No. 68/2009 s. 54(m)).  
new def. of *sexual offence* inserted by No. 68/2009 s. 97(Sch. item 82.1).

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 1—Preliminary

s. 3

*subordinate instrument* has the same meaning as in the **Interpretation of Legislation Act 1984**;

S. 3(1) def. of *the rules* amended by No. 64/1996 s. 24(e).

*the rules* means rules of court jointly made by the Chief Magistrate together with 2 or more Deputy Chief Magistrates, whether under the powers conferred by this Act or otherwise;

S. 3(1) def. of *youth justice centre* inserted by No. 48/2006 s. 42(Sch. item 22.1(b)).

*youth justice centre* means a youth justice centre established under section 478 of the **Children, Youth and Families Act 2005**.

S. 3(1) def. of *youth training centre* amended by No. 56/1989 s. 286(Sch. 2 item 11.1 (as amended by No. 93/1990 s. 24(h)(v)), repealed by No. 48/2006 s. 42(Sch. item 22.1(c)).

\* \* \* \* \*

S. 3(2) substituted by No. 46/1998 s. 7(Sch. 1), amended by No. 108/2004 s. 117(1) (Sch. 3 item 118.2).

- (2) If under the **Public Administration Act 2004** the name of the Department of Justice is changed, the reference in subsection (1) in the definitions of *Department* and *Secretary* to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
- (3) If by or under this Act a person is required or permitted to serve a document, the person may serve the document by causing it to be served by another person.

**3A Meaning of *family member***

S. 3A  
inserted by  
No. 27/2002  
s. 5.

- (1) In this Act, *family member* of a person means—
- (a) the spouse or domestic partner of the person;  
or
  - (b) a person who has or has had an intimate personal relationship with the person; or
  - (c) a person who is or has been a relative of the person; or
  - (d) a child who normally or regularly resides with the person; or
  - (e) a child of whom the person is a guardian; or
  - (f) another person who is or has been ordinarily a member of the household of the person.

- (2) For the purposes of the definition of *family member* in subsection (1)—

- (a) *domestic partner* of a person means—
- (i) a person who is in a registered relationship with the person; or
  - (ii) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
    - (A) for fee or reward; or

S. 3A(2)(a)  
substituted by  
No. 12/2008  
s. 73(1)(Sch. 1  
item 39.1).

- 
- (B) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);
- (b) *parent* of a child includes a guardian of the child or a person with whom the child normally or regularly resides;
- (c) *relative* of a person means—
- (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of the person; or
  - (ii) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of the person; or
  - (iii) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law of the person; or
  - (iv) an uncle, aunt, uncle-in-law or aunt-in-law of the person; or
  - (v) a nephew or niece of the person; or
  - (vi) a cousin of the person—
- and includes, in the case of domestic partners, a person who would be such a relative if the domestic partners were married to each other;
- (d) *spouse* of a person means a person to whom the person is or was married.

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- (3) For the purposes of the definition of *domestic partner* in subsection (2)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
  - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
  - (c) a person is not a domestic partner of another person only because they are co-tenants.
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S. 3A(3)  
substituted by  
No. 12/2008  
s. 73(1)(Sch. 1  
item 39.2).

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**PART 2—THE MAGISTRATES' COURT OF VICTORIA**

**4 Establishment of the Magistrates' Court**

S. 4(2)  
amended by  
No. 19/2005  
s. 4(1).

- (1) There shall be a court to be known as the Magistrates' Court of Victoria.
- (2) The Court shall consist of the magistrates, the judicial registrars of the court and the registrars of the Court.

S. 4(2A)  
inserted by  
No. 83/1992  
s. 181(a).

- (2A) The Court has an Industrial Division.

S. 4(2B)  
inserted by  
No. 83/1992  
s. 181(a).

- (2B) The Industrial Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.

- (3) The Court shall be constituted by a magistrate except in the case of any proceeding for which provision is made by any Act or the Rules for the Court to be constituted by a registrar.

S. 4(3AA)  
inserted by  
No. 19/2005  
s. 4(2).

- (3AA) Without limiting subsection (3), the Court may be constituted by a judicial registrar in the case of any proceeding for which provision is made by rules of court for—
- (a) the Court to be so constituted; and
- (b) the delegation to judicial registrars of powers of the Court to hear and determine the proceeding.

S. 4(3A)  
inserted by  
No. 83/1992  
s. 181(b),  
amended by  
Nos 64/1996  
s. 25, 36/2007  
s. 3(2).

- (3A) Despite subsection (3), the Industrial Division shall only be constituted by a magistrate who has been assigned to that Division by an Order made by the Governor in Council.

S. 4(3AB)  
inserted by  
No. 19/2005  
s. 4(3).

- (3AB) Nothing in subsection (3A) prevents the Industrial Division being constituted by a judicial registrar in accordance with subsection (3AA).

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- (3B) Despite anything to the contrary in this Act, a party to a proceeding in the Industrial Division may appear by a person who is not a legal practitioner if that person is authorised in writing by the party to appear for the party.
- (3C) The Industrial Division must exercise its jurisdiction with the minimum of legal form and technicality.
- 4A Establishment of Drug Court Division**
- (1) The Court has a Drug Court Division.
- (2) The Drug Court Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.
- (3) Despite section 4(3), the Drug Court Division shall only be constituted by a magistrate who has been assigned to that Division by the Chief Magistrate by notice published in the Government Gazette.
- (3A) Nothing in subsection (3) prevents the Drug Court Division being constituted by a judicial registrar in accordance with section 4(3AA).
- (4) Despite anything to the contrary in this Act, the Drug Court Division may only sit and act at a venue of the Court specified by the Chief Magistrate by notice published in the Government Gazette.
- (5) The Drug Court Division must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the **Sentencing Act 1991** and the proper consideration of the matters before the Court permit.
- S. 4(3B) inserted by No. 83/1992 s. 181(b), amended by No. 35/1996 s. 453(Sch. 1 item 53.1).
- S. 4(3C) inserted by No. 83/1992 s. 181(b).
- S. 4A inserted by No. 2/2002 s. 10.
- S. 4A(3A) inserted by No. 19/2005 s. 4(4).

**s. 4B**

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## **4B Adjournment of proceeding to Drug Court Division**

**S. 4B**  
inserted by  
No. 2/2002  
s. 10,  
substituted by  
No. 36/2007  
s. 4.

**S. 4B(1)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.3(a)).

**S. 4B(1)(a)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.3(a)).

**S. 4B(1)(b)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.3(b)).

**S. 4B(1)(c)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.3(a)).

- (1) The Court, at any time before taking a formal plea from the accused in a criminal proceeding that is not in the Drug Court Division, may adjourn the proceeding to the Drug Court Division at that or another venue if—
- (a) it appears to the Court that the accused might be eligible for a drug treatment order if convicted of the offence by the Drug Court Division; and
  - (b) the usual place of residence of the accused (if he or she has one) is within a postcode area specified, in relation to the venue at which the Drug Court Division sits and acts, by the Minister by notice published in the Government Gazette; and
  - (c) the accused consents to the Court doing so.
- (2) Despite anything to the contrary in this Act, a venue of the Court to which the proceeding is adjourned under subsection (1) is the proper venue of the Court for the purposes of this Act.

**S. 4C**  
inserted by  
No. 2/2002  
s. 11 (as  
amended by  
No. 13/2003  
s. 7),  
repealed by  
No. 36/2007  
s. 4.

\* \* \* \* \*

**4D Establishment of Koori Court Division**

- (1) The Court has a Koori Court Division.
- (2) The Koori Court Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.
- (3) Despite anything to the contrary in this Act, the Koori Court Division may only sit and act at a venue of the Court specified by the Chief Magistrate by notice published in the Government Gazette.
- (4) The Koori Court Division must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the **Sentencing Act 1991** and the proper consideration of the matters before the Court permit.
- (5) The Koori Court Division must take steps to ensure that, so far as practicable, any proceeding before it is conducted in a way which it considers will make it comprehensible to—
  - (a) the accused; and
  - (b) a family member of the accused; and
  - (c) any member of the Aboriginal community who is present in court.
- (6) Subject to this Act, the regulations and the rules, the Koori Court Division may regulate its own procedure.

S. 4D  
inserted by  
No. 27/2002  
s. 6.

S. 4D(5)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.4).

S. 4D(5)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.4).

s. 4E

#### 4E Jurisdiction of Koori Court Division

The Koori Court Division has—

- (a) the jurisdiction to deal with a proceeding for an offence given to it by section 4F; and
- (b) jurisdiction to deal with a breach of a sentence imposed by it (including any offence constituted by such a breach) or variation of such a sentence; and
- (c) any other jurisdiction given to it by or under this or any other Act.

S. 4E  
inserted by  
No. 27/2002  
s. 6.

S. 4E(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.5).

S. 4F  
inserted by  
No. 27/2002  
s. 6.

#### 4F Circumstances in which Koori Court Division may deal with certain offences

- (1) The Koori Court Division only has jurisdiction to deal with a proceeding for an offence (other than an offence constituted by a breach of a sentence imposed by it) if—
  - (a) the accused is Aboriginal; and
  - (b) the offence is within the jurisdiction of the Magistrates' Court, other than—
    - (i) a sexual offence as defined in section 6B(1) of the **Sentencing Act 1991**; or
    - (ii) a contravention of a family violence intervention order or a family violence safety notice under the **Family Violence Protection Act 2008** or an offence arising out of the same conduct as that from which the contravention arose; or

S. 4F(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.6(a)).

S. 4F(1)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.6(b)).

S. 4F(1)(b)(ii)  
substituted by  
No. 52/2008  
s. 252,  
amended by  
No. 68/2008  
s. 79(a).

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- (iii) a contravention of a personal safety intervention order under the **Personal Safety Intervention Orders Act 2010** or an offence arising out of the same conduct as that out of which the contravention arose; and
- (c) the accused—
- (i) intends to plead guilty to the offence; or
  - (ii) pleads guilty to the offence; or
  - (iii) intends to consent to the adjournment, under section 59 of the **Criminal Procedure Act 2009**, of the proceeding to enable him or her to participate in a diversion program; and
- (d) the accused consents to the proceeding being dealt with by the Koori Court Division.
- (2) Subject to and in accordance with the rules—
- (a) a proceeding may be transferred to the Koori Court Division, whether sitting at the same or a different venue; and
  - (b) the Koori Court Division may transfer a proceeding (including a proceeding transferred to it under paragraph (a)) to the Court, sitting other than as the Koori Court Division, at the same or a different venue.
- (3) Despite anything to the contrary in this Act, if a proceeding is transferred from one venue of the Court to another, the transferee venue is the proper venue of the Court for the purposes of this Act.

S. 4F(1)(b)(iii) inserted by No. 69/2008 s. 79(b), amended by No. 53/2010 s. 221(Sch. item 7.2).

S. 4F(1)(c) amended by No. 68/2009 s. 97(Sch. item 82.6(b)).

S. 4F(1)(c)(iii) amended by No. 7/2009 s. 427(1)(b) (as amended by No. 68/2009 s. 54(m)).

S. 4F(1)(d) amended by No. 68/2009 s. 97(Sch. item 82.6(b)).

s. 4G

**4G Sentencing procedure in Koori Court Division**

S. 4G  
inserted by  
No. 27/2002  
s. 6.

S. 4G(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.7).

- (1) This section applies to the Koori Court Division when it is considering which sentence to impose on an accused.
- (2) The Koori Court Division may consider any oral statement made to it by an Aboriginal elder or respected person.
- (3) The Koori Court Division may inform itself in any way it thinks fit, including by considering a report prepared by, or a statement or submission prepared or made to it by, or evidence given to it by—
  - (a) a Koori Court officer employed as an Aboriginal justice worker; or
  - (b) a community corrections officer appointed under Part 4 of the **Corrections Act 1986**; or
  - (c) a health service provider; or
  - (d) a victim of the offence; or
  - (e) a family member of the accused; or
  - (f) anyone else whom the Koori Court Division considers appropriate.
- (4) Nothing in this section affects the requirement to observe the rules of natural justice.
- (5) This section does not limit—
  - (a) any other power conferred on the Court by or under this or any other Act; or

S. 4G(3)(e)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.8).

(b) any other specific provision made by or under this or any other Act for the making of any report, statement or submission, or the giving of any evidence, to the Court for the purpose of assisting it in determining sentence.

(6) To avoid doubt, Part 3.10 of the **Evidence Act 2008** does not apply to the Koori Court Division in considering the sentence to impose under this section, unless the Koori Court Division directs, in accordance with section 4(2) of the **Evidence Act 2008**, that it applies.

S. 4G(6)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.1).

#### **4H Establishment of Family Violence Court Division**

S. 4H  
inserted by  
No. 77/2004  
s. 4.

- (1) The Court has a Family Violence Court Division.
- (2) The Family Violence Court Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.
- (3) Despite section 4(3), the Family Violence Court Division shall only be constituted by a magistrate who has been assigned to that Division by the Chief Magistrate by notice published in the Government Gazette.

(3A) Nothing in subsection (3) prevents the Family Violence Court Division being constituted by a judicial registrar in accordance with section 4(3AA).

S. 4H(3A)  
inserted by  
No. 19/2005  
s. 4(5).

- (4) In assigning a magistrate, the Chief Magistrate must have regard to the magistrate's relevant knowledge and experience in dealing with matters relating to family violence.
- (5) Despite anything to the contrary in this Act, the Family Violence Court Division may only sit and act at the following venues of the Court—
  - (a) Ballarat;
  - (b) Heidelberg;

(c) such other venue of the Court as the regulations prescribe for the purposes of this subsection.

(6) Subject to this Act, the regulations and rules, the Family Violence Court Division may regulate its own procedure.

#### 4I Jurisdiction of Family Violence Court Division

(1) The Family Violence Court Division has jurisdiction to deal with any of the following matters if the matter is within the jurisdiction of the Magistrates' Court and arises from or includes allegations of family violence by a person—

(a) proceedings for or with respect to the following orders under the **Family Violence Protection Act 2008**—

(i) a family violence intervention order under that Act; or

(ii) a counselling order or an order under section 137 of that Act;

(b) civil proceedings for or with respect to damages for personal injury;

(c) matters arising under—

(i) the Family Law Act 1975 of the Commonwealth; or

(ii) the Child Support (Assessment) Act 1989 of the Commonwealth;

(d) proceedings for or with respect to the trial of a person for a summary offence or an indictable offence that may be heard and determined summarily;

S. 4I  
inserted by  
No. 77/2004  
s. 4.

S. 4I(1)(a)  
amended by  
No. 52/2008  
s. 253(1).

S. 4I(1)(a)(i)  
substituted by  
No. 52/2008  
s. 253(2).

S. 4I(1)(a)(ii)  
substituted by  
No. 52/2008  
s. 253(2).

- (e) proceedings for or with respect to the committal for trial of a person for an indictable offence;
- (f) proceedings for an order under Division 1 or 2 of Part 4 of the **Sentencing Act 1991** that arise from an offence referred to in paragraph (d).

**Note**

Division 1 of Part 4 of the **Sentencing Act 1991** deals with restitution. Division 2 of Part 4 of the **Sentencing Act 1991** deals with compensation.

- (2) Despite anything to the contrary in the **Victims of Crime Assistance Act 1996**, if the act of violence to which an application under that Act relates is family violence by a person—
  - (a) the Family Violence Court Division has jurisdiction to deal with the application; and
  - (b) in dealing with the application, the Family Violence Court Division has the same functions, powers and duties as the Victims of Crime Assistance Tribunal; and
  - (c) for the purposes of the application and any subsequent review of a decision relating to the application, the Family Violence Court Division is taken to constitute the Victims of Crime Assistance Tribunal.
- (3) The Family Violence Court Division also has—
  - (a) jurisdiction to deal with a breach of an order referred to in section 4I(1)(a), including any offence constituted by such a breach; and
  - (b) any other jurisdiction given to it by or under this or any other Act.

S. 4I(4)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.9).

- (4) Subject to and in accordance with the rules, a proceeding may be transferred to the Family Violence Court Division, whether sitting at the same or a different venue, but only if—
- (a) the place where the family violence the subject of the proceeding is alleged to have been committed; or
  - (b) the place of residence of the accused, defendant or respondent (within the meaning of the **Family Violence Protection Act 2008**); or
  - (c) the place of permanent or temporary residence of the person against whom the family violence is alleged to have been committed—

is within a postcode area specified, in relation to the venue of the Court at which the Family Violence Court Division is sitting, by the Minister by notice published in the Government Gazette.

- (5) Subject to and in accordance with the rules, the Family Violence Court Division may transfer a proceeding (including a proceeding transferred to it under subsection (4)) to the Court, sitting other than as the Family Violence Court Division, at the same or a different venue.
- (6) Despite anything to the contrary in this Act, if a proceeding is transferred from one venue of the Court to another, the transferee venue is the proper venue of the Court for the purposes of this Act.

#### 4J Adjournment to seek legal advice

- (1) The Family Violence Court Division may, on its own initiative or on the application of a party to a proceeding, exercise its power under section 128 to adjourn proceedings to give one or more of the parties a reasonable opportunity to obtain legal advice.
- (2) The Family Violence Court Division may resume the proceedings if it is satisfied that the party or parties have had a reasonable opportunity to obtain legal advice whether or not that advice has been obtained.

S. 4J  
inserted by  
No. 77/2004  
s. 4.

##### Note

For *party* to a proceeding, see section 3(1).

#### 4K Alternative arrangements for giving evidence

- (1) The Family Violence Court Division may direct that any of the following alternative arrangements be made for the giving of evidence by a witness in a proceeding—
  - (a) permitting the evidence to be given from a place other than the courtroom by means of closed circuit television or other facilities that enable communication between that place and the courtroom;
  - (b) using screens to remove the accused, defendant or respondent (within the meaning of the **Family Violence Protection Act 2008**) from the witness's direct line of vision;
  - (c) permitting a person to be beside the witness while he or she is giving evidence for the purpose of providing emotional support to him or her;

S. 4K  
inserted by  
No. 77/2004  
s. 4.

S. 4K(1)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.10).

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- (d) requiring legal practitioners to be seated while examining or cross-examining the witness;
  - (e) permitting only persons specified by the Family Violence Court Division to be present while the witness is giving evidence;
  - (f) any other alternative arrangements the Family Violence Court Division considers appropriate.
- (2) If the witness is 18 years of age or over, the Family Violence Court Division may make a direction under subsection (1) on its own initiative or on the application of a party to the proceeding.
- (3) If the witness is under 18 years of age, the Family Violence Court Division must make a direction under subsection (1) unless it considers it is not appropriate to do so having regard to—
- (a) the wishes expressed by the witness; and
  - (b) the age and maturity of the witness; and
  - (c) any other matters that the Family Violence Court Division considers relevant.
- (4) The Family Violence Court Division may hear an application under subsection (2) or ascertain the matters in subsection (3) in camera and, except as otherwise directed by the Family Violence Court Division, persons who are not parties to the proceeding or their legal practitioners or representatives are not permitted to be present while the hearing takes place or the matters are being ascertained.
- (5) Any place outside the courtroom where a witness is permitted to give evidence under this section is to be taken to be part of the courtroom while the witness is there for the purpose of giving evidence.

(6) The Family Violence Court Division may at any time in the course of the proceeding vary or revoke a direction made under subsection (1) on its own initiative or on the application of a party to the proceeding.

\* \* \* \* \*

Note to s. 4K(6) repealed by No. 68/2009 s. 97(Sch. item 82.11).

**Notes**

- 1 For *party* to a proceeding, see section 3(1).
- 2 If a witness is the complainant in a criminal proceeding, Divisions 4 and 6 of Part 8.2 of Chapter 8 of the **Criminal Procedure Act 2009** also apply.

Notes to s. 4K inserted by No. 68/2009 s. 97(Sch. item 82.12).

**4L Restriction on children being called as witnesses or present in court**

S. 4L inserted by No. 77/2004 s. 4.

- (1) A child must not be present during, or called as a witness in, proceedings in the Family Violence Court Division, other than proceedings for a family violence intervention order, if—
  - (a) the child is a family member of a party to the proceedings; or
  - (b) the proceedings arise from or include allegations of family violence and the child is a family member of the alleged victim of that family violence.
- (2) However, subsection (1) does not apply if—
  - (a) the child is the accused, defendant or respondent (within the meaning of the **Family Violence Protection Act 2008**) in the proceedings; or

S. 4L(1) amended by No. 52/2008 s. 253(3).

S. 4L(2)(a) amended by No. 68/2009 s. 97(Sch. item 82.13).

s. 4M

- (b) the Family Violence Court Division makes an order allowing the child to be present or called as a witness (as the case may be).

Note to s. 4L substituted by No. 52/2008 s. 253(4).

**Note**

Sections 67 and 150 of the **Family Violence Protection Act 2008** restricts when a child can be present during, or called as a witness in, a proceeding for a family violence intervention order.

S. 4M inserted by No. 51/2006 s. 4.

**4M Establishment of Neighbourhood Justice Division**

- (1) The Court has a Neighbourhood Justice Division.
- (2) The Neighbourhood Justice Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.
- (3) Despite section 4(3), the Neighbourhood Justice Division shall only be constituted by a magistrate who has been assigned to that Division by the Chief Magistrate by notice published in the Government Gazette.
- (4) Nothing in subsection (3) prevents the Neighbourhood Justice Division being constituted by a judicial registrar in accordance with section 4(3AA).
- (5) In assigning a magistrate to the Neighbourhood Justice Division, the Chief Magistrate must—
  - (a) have regard to the magistrate's knowledge of, or experience in the application of, the principles of therapeutic jurisprudence and restorative justice; and
  - (b) consult with the President of the Children's Court.

- (6) The Neighbourhood Justice Division must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the **Sentencing Act 1991** and the proper consideration of the matters before the Court permit.
- (7) The Neighbourhood Justice Division must take steps to ensure that, so far as practicable, any proceeding before it is conducted in a way which it considers will make it comprehensible to the parties to the proceeding.
- (8) Subject to this Act, the regulations and the rules, the Neighbourhood Justice Division may regulate its own procedure.

**4N Places where Neighbourhood Justice Division may sit and act**

S. 4N  
inserted by  
No. 51/2006  
s. 4.

Despite anything to the contrary in this Act, the Neighbourhood Justice Division may only sit and act—

- (a) at a venue of the Court specified by the Chief Magistrate by notice published in the Government Gazette; and
- (b) if the Minister specifies a municipal district by notice published in the Government Gazette, at any place within that municipal district.

**4O Jurisdiction of Neighbourhood Justice Division**

S. 4O  
inserted by  
No. 51/2006  
s. 4.

- (1) In this section—

***close connection*** means connection involving regular congregation for the purpose of social or community support;

***municipal district*** means a municipal district specified under section 4N(b).

(2) The Neighbourhood Justice Division has the jurisdiction referred to in this section if—

S. 40(2)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.14).

(a) in the case of a criminal proceeding, the accused—

- (i) resides in the municipal district; or
- (ii) is a homeless person who is alleged to have committed the offence in the municipal district; or
- (iii) is a homeless person who is alleged to have committed the offence outside the municipal district but who is living in the municipal district in accommodation of the kind referred to in paragraph (a) of the definition of *homeless person* in section 3(1); or
- (iv) is an Aborigine with a close connection to the municipal district and is alleged to have committed the offence in that district;

S. 40(2)(ab)  
inserted by  
No. 68/2008  
s. 80(1),  
amended by  
No. 53/2010  
s. 221(Sch.  
item 7.3(a)).

(ab) in the case of a proceeding under the **Personal Safety Intervention Orders Act 2010**—

- (i) at least one of the parties resides in the municipal district; or
- (ii) at least one of the parties is—
  - (A) a homeless person; or
  - (B) an Aborigine with a close connection to the municipal district—

and the Court considers that it is appropriate to deal with the matter in the Neighbourhood Justice Division; or

- 
- (iii) the whole or a material part of the alleged stalking or prohibited behaviour occurred in the municipal district;
- (b) in the case of a civil proceeding or a proceeding under the **Family Violence Protection Act 2008**—
- (i) at least one of the parties resides in the municipal district; or
- (ii) at least one of the parties is—
- (A) a homeless person; or
- (B) an Aborigine with a close connection to the municipal district—
- and the Court considers that it is appropriate to deal with the matter in the Neighbourhood Justice Division; or
- (iii) the whole or a material part of the cause of action or claim arose in the municipal district; or
- (iv) the whole or a material part of the allegations of family violence occurred in the municipal district.
- (3) Subject to subsection (4), the Neighbourhood Justice Division has—
- (a) the jurisdiction of the Court given by section 25; and
- (b) the jurisdiction given to the Court with respect to a criminal proceeding by or under any other Act; and
- S. 40(2)(ab)(iii) amended by No. 53/2010 s. 221(Sch. item 7.3(b)).**
- S. 40(2)(b) amended by No. 52/2008 s. 254(1).**

s. 4P

S. 40(3)(c)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.15).

- (c) jurisdiction to deal with a breach of a sentence imposed by it (including any offence constituted by such a breach) or variation of such a sentence; and
- (d) the civil jurisdiction of the Court in respect of a cause of action or claim, or a class of cause of action or claim, or a proceeding, or a class of proceeding, specified in the rules; and

S. 40(3)(da)  
inserted by  
No. 68/2008  
s. 80(3),  
amended by  
No. 53/2010  
s. 221(Sch.  
item 7.4).

- (da) the jurisdiction of the Court given by the **Personal Safety Intervention Orders Act 2010**; and

S. 40(3)(e)  
amended by  
No. 52/2008  
s. 254(2).

- (e) the jurisdiction of the Court given by the **Family Violence Protection Act 2008**.

- (4) The Neighbourhood Justice Division does not have jurisdiction to deal with—
  - (a) a committal proceeding into an indictable offence; or
  - (b) a proceeding for a sexual offence as defined in section 6B(1) of the **Sentencing Act 1991**.

S. 4P  
inserted by  
No. 51/2006  
s. 4.

#### 4P Transfer of proceedings

- (1) Subject to and in accordance with the rules—
  - (a) a proceeding may be transferred to the Neighbourhood Justice Division, whether sitting at the same or a different venue; and
  - (b) the Neighbourhood Justice Division may transfer a proceeding (including a proceeding transferred to it under paragraph (a)) to the Court, sitting other than as the

Neighbourhood Justice Division, at the same or a different venue.

- (2) Despite anything to the contrary in this Act, if a proceeding is transferred from one venue of the Court to another, the transferee venue is the proper venue of the Court for the purposes of this Act.

**4Q Sentencing procedure in Neighbourhood Justice Division**

S. 4Q  
inserted by  
No. 51/2006  
s. 4.

- (1) This section applies to the Neighbourhood Justice Division when it is considering which sentence to impose on an accused.

S. 4Q(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.16).

- (2) The Neighbourhood Justice Division may inform itself in any way it thinks fit, including by considering a report prepared by, or a statement or submission prepared or made to it by, or evidence given to it by—

- (a) a Neighbourhood Justice officer; or
- (b) a community corrections officer appointed under Part 4 of the **Corrections Act 1986**; or
- (c) the Secretary to the Department of Human Services; or

- (ca) the Secretary to the Department of Health; or

S. 4Q(2)(ca)  
inserted by  
No. 29/2010  
s. 63(2).

- (d) a health service provider; or
- (e) a community service provider; or
- (f) a victim of the offence; or
- (g) anyone else whom the Division considers appropriate.

s. 4R

S. 4Q(3)  
repealed by  
No. 77/2010  
s. 29.

\* \* \* \* \*

- (4) Nothing in this section affects the requirement to observe the rules of natural justice.
- (5) This section does not limit—
  - (a) any other power conferred on the Court by or under this or any other Act; or
  - (b) any other specific provision made by or under this or any other Act for the making of any report, statement or submission, or the giving of any evidence, to the Court for the purpose of assisting it in determining a sentence.
- (6) To avoid doubt, Part 3.10 of the **Evidence Act 2008** does not apply to the Neighbourhood Justice Division in considering the sentence to impose under this section, unless the Neighbourhood Justice Division directs, in accordance with section 4(2) of the **Evidence Act 2008**, that it applies.

S. 4Q(6)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.2).

S. 4R  
inserted by  
No. 76/2006  
s. 9.

#### 4R Sexual Offences List

- (1) A Sexual Offences List is established.
- (2) The Sexual Offences List consists of any proceeding that relates (wholly or partly) to a charge for a sexual offence.
- (3) The operation and administration of the Sexual Offences List is at the direction of the Chief Magistrate.
- (4) The Chief Magistrate, under section 16A, may issue practice directions, statements or notes for the Court in relation to the Sexual Offences List.

- (5) Nothing in this section takes away from, or limits, a discretion or power conferred on the Chief Magistrate by or under this Act.

**4S Assessment and Referral Court List**

**S. 4S**  
inserted by  
**No. 12/2010**  
s. 5.

- (1) An Assessment and Referral Court List is established.
- (2) Subject to subsection (3), the Assessment and Referral Court List consists of any criminal proceeding referred to that List by the Court.
- (3) The Court must not refer a criminal proceeding to the Assessment and Referral Court List unless—
- (a) the proceeding relates, wholly or partly, to a charge for an offence which does not involve—
    - (i) a *serious violence offence* as defined in section 6B(1) of the **Sentencing Act 1991**; or
    - (ii) a *violent offence* as defined in section 6B(1) of that Act; or
    - (iii) a *sexual offence* as defined in section 6B(1) of that Act; and
  - (b) the accused meets the eligibility criteria specified in section 4T; and
  - (c) the accused consents to the proceeding being dealt with in the Assessment and Referral Court List; and
  - (d) the proceeding is at a venue of the Court where the Assessment and Referral Court List operates; and
  - (e) it appears to the Court that, in all the circumstances, it is appropriate for the proceeding to be dealt with in the Assessment and Referral Court List.

- (4) Despite anything to the contrary in this Act, the Assessment and Referral Court List may only sit and act at a venue of the Court specified by the Chief Magistrate by notice published in the Government Gazette.
- (5) The operation and administration of the Assessment and Referral Court List is at the direction of the Chief Magistrate.
- (6) The Chief Magistrate, under section 16A, may issue practice directions, statements or notes for the Court in relation to the Assessment and Referral Court List.
- (7) Nothing in this section takes away from, or limits, a discretion or power conferred on the Chief Magistrate by or under this Act.
- (8) Nothing in this section or sections 4T to 4Y affects the operation or application of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

S. 4T  
inserted by  
No. 12/2010  
s. 5.

#### 4T Eligibility criteria

- (1) To be eligible for a criminal proceeding to enter the Assessment and Referral Court List, an accused must meet—
  - (a) the diagnostic criteria; and
  - (b) the functional criteria; and
  - (c) the needs criteria.
- (2) The diagnostic criteria are that the accused has one or more of the following—
  - (a) a mental illness;
  - (b) an intellectual disability;
  - (c) an acquired brain injury;
  - (d) autism spectrum disorder;

- 
- (e) a neurological impairment, including, but not limited to dementia.
- (3) The functional criteria are that the accused has one or more of the diagnostic criteria which causes a substantially reduced capacity in at least one of the following areas—
- (a) self-care;
  - (b) self-management;
  - (c) social interaction;
  - (d) communication.
- (4) The needs criteria are that the accused would derive benefit from receiving coordinated services in accordance with an individual support plan that may include one or more of the following—
- (a) psychological assessment;
  - (b) welfare services;
  - (c) health services;
  - (d) mental health services;
  - (e) disability services;
  - (f) drug treatment services or alcohol treatment services;
  - (g) housing and support services;
  - (h) other services that aim to reduce the risk of offending or re-offending.

**4U Specific powers of the Assessment and Referral Court List**

- (1) The Assessment and Referral Court List has the powers of the Court necessary to enable it to exercise its jurisdiction.

S. 4U  
inserted by  
No. 12/2010  
s. 5.

- (2) Without limiting subsection (1), the Court may—
  - (a) at any time, convene a hearing to receive reports on an accused's progress and compliance with his or her individual support plan;
  - (b) adjust, amend or vary any individual support plan of an accused;
  - (c) at any time, remove a criminal proceeding from the Assessment and Referral Court List;
  - (d) at any time discharge an accused or indicate an intention to discharge the accused.
- (3) In hearing any proceeding in the Assessment and Referral Court List, the Court must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the **Sentencing Act 1991** and the proper consideration of the matters before the Court permit.

S. 4V  
inserted by  
No. 12/2010  
s. 5.

#### **4V Adjournment of proceeding in Assessment and Referral Court List**

- (1) The Court, at any time before taking a formal plea from the accused in a criminal proceeding which has been referred to the Assessment and Referral Court List, may adjourn a proceeding in that List for the purposes of a clinical assessment of the accused to—
  - (a) identify the accused's needs based on the needs criteria set out in section 4T; and
  - (b) prepare an individual support plan for the accused.
- (2) The Court must fix a return date for consideration by the Court of the proposed individual support plan.

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- (3) On the return date, the Court may—
- (a) approve the individual support plan, with or without amendments;
  - (b) fix bail conditions or any undertakings or other conditions the Court considers appropriate;
  - (c) make any other order the Court thinks fit.
- (4) The Court may adjourn a proceeding under this section for a period not exceeding 12 months to enable the accused to be assessed and participate in and complete his or her individual support plan.

**4W Other adjournment powers not limited**

Nothing in section 4V limits the operation of section 59 or section 331 of the **Criminal Procedure Act 2009** in relation to any criminal proceeding.

S. 4W  
inserted by  
No. 12/2010  
s. 5.

**4X Transfer of proceedings to and from Assessment and Referral Court List**

- (1) Subject to and in accordance with this Act and the rules—
- (a) a proceeding may be transferred to the Assessment and Referral Court List, whether sitting at the same or a different venue; and
  - (b) the Court may transfer a proceeding in the Assessment and Referral Court List out of that List and back to the Court for hearing at the same or a different venue.
- (2) Despite subsection (1), a proceeding in the Assessment and Referral Court List must be transferred out of the List to a contested hearing in the Court if at any stage the accused—
- (a) pleads not guilty; or
  - (b) indicates an intention to plead not guilty.

S. 4X  
inserted by  
No. 12/2010  
s. 5.

- (3) Despite anything to the contrary in this Act, if a proceeding is transferred from one venue of the Court to another, the transferee venue is the proper venue of the Court for the purposes of this Act.
- (4) This section does not limit—
  - (a) any other power conferred on the Court by or under this or any other Act; or
  - (b) any other specific provision made by or under this or any other Act for the making of any report, statement or submission, or the giving of any evidence, to the Court for the purpose of assisting it in hearing any criminal proceeding or determining sentence.

S. 4Y  
inserted by  
No. 12/2010  
s. 5.

#### **4Y Completion of, and participation in, individual support plan**

- (1) On completion of an individual support plan by an accused to the satisfaction of the Court, the Court must hear and determine the criminal proceeding to which the individual support plan related.
- (2) If an accused completes, or participates in, an individual support plan to the satisfaction of the Court, the Court may discharge the accused without any finding of guilt.
- (3) The fact of participation in the individual support plan is not to be treated as a finding of guilt.
- (4) If the accused is discharged by the Court, the fact of participation in, or completion of, the individual support plan and the discharge of the accused is a defence to a later charge for the same offence or a similar offence arising out of the same circumstances.

- (5) If an accused participates in an individual support plan to the satisfaction of the Court and the accused is subsequently found guilty of the charge, the Court must take into account the extent to which the accused participated in the individual support plan when sentencing the accused.
- (6) If an accused fails to participate in an individual support plan to the satisfaction of the Court and the accused is subsequently found guilty of the charge, the Court must not take into account the accused's failure to participate in the individual support plan when sentencing the accused.
- (7) Nothing in this section affects the requirement to observe the rules of natural justice.
- (8) This section does not affect the incurring of demerit points under the **Road Safety Act 1986** or regulations made under that Act.
- (9) Nothing in this section affects or limits the operation of the **Sentencing Act 1991** or the powers of a magistrate or the Court under that Act.

## 5 Where and when Court to be held

- (1) The Court is to be held at such places as the Governor in Council, by Order published in the Government Gazette, directs.
- (2) The Court may sit and act at any time and place.
- (3) The Court must sit on such days and at such times as the Chief Magistrate from time to time directs by notice published in the Government Gazette.
- (4) The Chief Magistrate may from time to time, by notice published in the Government Gazette, alter the days and times appointed for the holding of the Court at any place.

S. 5(1)  
amended by  
No. 64/1996  
s. 26(1).

S. 5(3)  
inserted by  
No. 64/1996  
s. 26(2).

S. 5(4)  
inserted by  
No. 64/1996  
s. 26(2).

S. 5A  
inserted by  
No. 64/1996  
s. 27.

## 5A Mention courts

The Chief Magistrate may from time to time, by notice published in the Government Gazette, nominate a venue of the court as a mention court, whether generally or for a particular class of proceeding.

## 6 Magistrate to be in attendance

- (1) The Chief Magistrate must make arrangements for a magistrate to attend on the day and at the time and place at which the Court is to be held.
- (2) If a magistrate does not arrive at the place at which the Court is to be held before the time fixed for the holding of the Court, a registrar may open the Court and adjourn all proceedings to another day or to another venue, as directed by a magistrate.

## 7 Appointment of magistrates

- (1) The Governor in Council may appoint as many magistrates as are necessary for transacting the business of the Court.
- (1A) A magistrate (other than the Chief Magistrate) may be appointed on a full-time or part-time basis.
- (2) The Governor in Council may appoint one of the magistrates to be Chief Magistrate and two or more to be Deputy Chief Magistrates.
- (2A) A Deputy Chief Magistrate appointed on or after the commencement of section 5 of the **Courts Legislation (Amendment) Act 2003** holds office for a term not exceeding 5 years specified in the instrument of appointment, but is eligible for reappointment.

S. 7(1A)  
inserted by  
No. 31/2004  
s. 4(1).

S. 7(2A)  
inserted by  
No. 39/2003  
s. 5.

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- (3) A person is not eligible for appointment as a magistrate unless he or she—
- (a) is or has been a judge or magistrate of—
- (i) the High Court of Australia or of a court created by the Parliament of the Commonwealth; or
- (ii) a court of Victoria or of another State or of the Northern Territory or the Australian Capital Territory; or
- (b) is an Australian lawyer (within the meaning of the **Legal Profession Act 2004**) of at least 5 years' standing.
- (4) A person who has attained the age of 70 years is not eligible to be appointed as a magistrate.
- (5) Every person who is appointed as a magistrate must, before acting as a magistrate, take an oath of office in the prescribed form and manner.
- (6) A magistrate may resign from office by delivering to the Governor a signed letter of resignation.
- (7) A magistrate, other than a Chief Magistrate appointed on or after 7 May 1996, is an officer within the meaning of the **State Superannuation Act 1988**.
- (7A) For the purposes of subsection (7), if any magistrate, other than a Chief Magistrate appointed on or after 7 May 1996, was immediately prior to his or her appointment an acting magistrate, during that appointment he or she is an officer within the meaning of the **State Superannuation Act 1988**.
- S. 7(3) substituted by No. 31/2004 s. 4(2).
- S. 7(3)(b) substituted by No. 18/2005 s. 18(Sch. 1 item 63.2).
- S. 7(4) amended by No. 9/1995 s. 10(1)(a).
- S. 7(7) amended by No. 13/1999 s. 5.
- S. 7(7A) inserted by No. 3/2005 s. 10(1).

S. 7(8)  
inserted by  
No. 31/2004  
s. 4(3).

(8) A part-time magistrate, while undertaking the duties of a magistrate, has the same powers, duties, protection and immunity as a full-time magistrate.

S. 7(9)  
inserted by  
No. 31/2004  
s. 4(3).

(9) A part-time magistrate must not engage in legal practice at any time during the term of his or her appointment.

S. 7(10)  
inserted by  
No. 3/2005  
s. 10(2).

(10) Subject to subsection (7A), this section does not apply to an acting magistrate.

## 8 Appointment of Acting Chief Magistrate

(1) The Governor in Council may appoint one of the magistrates to be Acting Chief Magistrate during any period when the Chief Magistrate is absent on leave or for any reason is temporarily unable to perform the duties of the office of Chief Magistrate.

S. 8(1A)  
inserted by  
No. 64/1996  
s. 28(1).

(1A) If there is—

(a) a vacancy in the office of the Chief Magistrate; or

(b) a period when the Chief Magistrate is absent on leave or for any reason is temporarily unable to perform the duties of the office of Chief Magistrate and the Governor in Council has not made an appointment under subsection (1)—

the senior of the Deputy Chief Magistrates willing to act as Chief Magistrate shall act as Chief Magistrate.

S. 8(1B)  
inserted by  
No. 64/1996  
s. 28(1).

(1B) If the appointment of Deputy Chief Magistrate of 2 or more Deputy Chief Magistrates took place on the same date, the Deputy Chief Magistrates have seniority according to the seniority assigned in the instruments of appointment, or if there is no such

assignment, according to the order of their taking oath of office.

- (2) A magistrate who is appointed as Acting Chief Magistrate or acts as Chief Magistrate under subsection (1A) has, during the period of the appointment or the period of acting as Chief Magistrate, the same powers and duties as the Chief Magistrate.

S. 8(2)  
amended by  
No. 64/1996  
s. 28(2)(a)(b).

### 9 Appointment of acting magistrates

- (1) The Governor in Council may appoint as many acting magistrates as are necessary for transacting the business of the Court.

- (2) A person is not eligible for appointment as an acting magistrate unless he or she—

(a) has not attained the age of 75 years and is or has been a judge or magistrate of—

(i) the High Court of Australia or of a court created by the Parliament of the Commonwealth; or

(ii) a court of Victoria or of another State or of the Northern Territory or the Australian Capital Territory; or

(b) is an Australian lawyer (within the meaning of the **Legal Profession Act 2004**) of at least 5 years' standing.

S. 9  
amended by  
Nos 9/1995  
s. 10(1)(b)(c),  
35/1996  
s. 453(Sch. 1  
item 53.2),  
31/2004 s. 5,  
substituted by  
No. 3/2005  
s. 11.<sup>1</sup>

S. 9(2)(b)  
substituted by  
No. 18/2005  
s. 18(Sch. 1  
item 63.2).

- (3) The instrument of appointment of a person as an acting magistrate must specify the terms and conditions of appointment.

- (4) The Attorney-General may from time to time, by notice in writing, require an acting magistrate to undertake the duties of a magistrate on a full time or sessional basis.

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- (5) The Attorney-General does not have the power to revoke or amend a notice given under subsection (4).
- (6) An acting magistrate—
- (a) has the same powers and jurisdiction as a magistrate;
  - (b) is eligible for re-appointment as an acting magistrate;
  - (c) ceases to hold office—
    - (i) at the end of 5 years from the date of his or her appointment; or
    - (ii) on attaining the age of 70 years or, in the case of an acting magistrate covered by subsection (2)(a), 75 years—  
whichever is the sooner;
  - (d) may only be removed from office in the same way and on the same grounds as a magistrate is liable to be removed from office.
- (7) Except as provided by section 7(7A), service as an acting magistrate does not count as service in the office of magistrate for the purposes of section 7(7).
- (8) Except with the approval of the Attorney-General, an acting magistrate must not engage in legal practice, undertake paid employment or conduct a business, trade or profession of any kind while undertaking the duties of a magistrate.

## 10 Salaries

- (1) Part 1 of Schedule 1 sets out the salaries payable to magistrates.

S. 10(1)  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.1).

- (2) Part 2 of Schedule 1 sets out the remuneration payable to acting magistrates.

S. 10(2)  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.1).

### 10A Pension of Chief Magistrate

S. 10A  
inserted by  
No. 13/1999  
s. 6.

- (1) The Chief Magistrate and the partner and children of the Chief Magistrate are entitled to pensions in the same circumstances and at the same rates and on the same terms and conditions as a judge of the County Court (other than the Chief Judge) and the partner and children of such a judge are entitled to pensions under section 14 of the **County Court Act 1958**.

S. 10A(1)  
amended by  
No. 23/2008  
s. 20.

- (2) A pension under this section is liable to be suspended or determined in the same circumstances and to the same extent as pensions under section 14 of the **County Court Act 1958** are liable to be suspended or determined.

- (2A) A pension under this section may be commuted in the same circumstances and to the same extent as pensions under sections 14AC, 14AF and 14AI of the **County Court Act 1958** may be commuted and for that purpose sections 14AA to 14AI of that Act apply with such modifications as are necessary.

S. 10A(2A)  
inserted by  
No. 19/2001  
s. 16(1).

- (3) Pensions under this section and any payments of lump sums provided by the commutation of those pensions are payable out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

S. 10A(3)  
amended by  
No. 19/2001  
s. 16(2).

- (4) This section applies in respect of the appointment of a Chief Magistrate made on or after 7 May 1996.

s. 10A

S. 10A(5)  
inserted by  
No. 4/2009  
s. 37(Sch. 1  
item 17).

(5) In this section—

*domestic partner* of a person means—

- (a) a person who is, or was at the time of the person's death, in a registered domestic relationship with the person; or
- (b) a person to whom the person is not married but with whom, in the opinion of the Minister, the person is, or was at the time of the person's death, living as a couple on a genuine domestic basis (irrespective of gender);

S. 10A(5) def.  
of *partner*  
substituted by  
No. 40/2010  
s. 109(1).

*partner* of a person means the person's spouse or domestic partner;

*spouse* of a person means a person to whom the person is, or was at the time of the person's death, married.

S. 10A(6)  
inserted by  
No. 4/2009  
s. 37(Sch. 1  
item 17).

(6) For the purposes of the definition of *domestic partner* in subsection (5)—

- (a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

(7) For the purposes of subsection (1), the definition of *partner* as substituted by section 109(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the entitlement to a pension of a partner of a Chief Magistrate or former Chief Magistrate only if the death of the Chief Magistrate or former Chief Magistrate occurs on or after the commencement of the substituting section.

S. 10A(7)  
inserted by  
No. 40/2010  
s. 109(2).

\* \* \* \* \*

S. 11  
repealed by  
No. 16/2005  
s. 8(2).

## 12 Vacation of office

A person ceases to hold office as a magistrate if—

S. 12  
amended by  
No. 16/2005  
s. 8(3)(a).

(a) he or she attains the age of 70 years; or

S. 12(a)  
amended by  
Nos 9/1995  
s. 10(1)(d),  
16/2005  
s. 8(3)(b).

(b) he or she is removed from office by the Governor in Council in accordance with Part IIIA of the **Constitution Act 1975**; or

S. 12(b)  
substituted by  
No. 16/2005  
s. 8(3)(c).

(c) his or her office is abolished by or under an Act.

S. 12(c)  
inserted by  
No. 16/2005  
s. 8(3)(c).

## 13 Assignment of duties

S. 13  
amended by  
No. 64/1996  
s. 29,  
substituted by  
No. 43/1998  
s. 45.

(1) The Chief Magistrate may assign duties to a magistrate or judicial registrar.

S. 13(1)  
amended by  
No. 36/2007  
s. 3(3).

s. 13A

S. 13(2)  
amended by  
No. 36/2007  
s. 3(3).

- (2) A magistrate or judicial registrar must carry out the duties that are from time to time assigned to him or her by the Chief Magistrate.

S. 13(3)  
inserted by  
No. 31/2004  
s. 6,  
amended by  
No. 36/2007  
s. 3(4).

- (3) A magistrate (other than an acting magistrate), although not appointed on a part-time basis, may, by agreement in writing entered into with the Chief Magistrate, undertake the duties of a magistrate on a part-time basis.

S. 13A  
inserted by  
No. 43/1998  
s. 45.

**13A Delegation by the Chief Magistrate**

The Chief Magistrate, by instrument, may delegate to any magistrate any of his or her powers under sections 6(1) and 13.

S. 13B  
inserted by  
No. 10/1999  
s. 21,  
substituted by  
No. 24/2007  
s. 5.

**13B Professional development and training**

- (1) In this section—

S. 13B(1)  
def. of  
*judicial officer*  
amended by  
No. 36/2007  
s. 3(5).

*judicial officer* means—

- (a) a magistrate; or
  - (b) a judicial registrar; or
  - (c) the principal registrar, a registrar or a deputy registrar.
- (2) The Chief Magistrate is responsible for directing the professional development and continuing education and training of judicial officers.
- (3) In discharging his or her responsibility under subsection (2) the Chief Magistrate may direct—
- (a) all judicial officers; or
  - (b) a specified class of judicial officer; or

(c) a specified judicial officer—

to participate in a specified professional development or continuing education and training activity.

(4) A direction under subsection (3) may be given orally or in writing.

#### **14 Protection of magistrates**

(1) A magistrate has, in the performance of his or her duties as a magistrate, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

(2) For the purposes of subsection (1), the protection and immunity extends to the conduct of a committal proceeding.

S. 14  
amended by  
No. 64/2010  
s. 63 (ILA  
s. 39B(1)).

S. 14(2)  
inserted by  
No. 64/2010  
s. 63.

#### **15 Council of magistrates**

(1) A Council of the magistrates (not including any acting magistrate) must meet at least once in each year on a day or days fixed by the Chief Magistrate to—

(a) consider the operation of this Act and the Rules; and

(b) consider the working of the offices of the Court and the arrangements relating to the duties of court officials; and

(c) inquire into and examine any defects which appear to exist in the system of procedure or the administration of the law in the Court.

(2) The Chief Magistrate must cause adequate notice of a meeting to be given to all the magistrates.

(3) The magistrates must report annually to the Governor on the operation of the Court.

## 16 Rules of Court

S. 16  
(Heading)  
inserted by  
No. 19/2005  
s. 7(1).

S. 16(1)  
amended by  
No. 64/1996  
s. 30(1)(a).

S. 16(1)(ab)  
inserted by  
No. 47/2010  
s. 89(a).

S. 16(1)(ac)  
inserted by  
No. 47/2010  
s. 89(a).

S. 16(1)(ad)  
inserted by  
No. 47/2010  
s. 89(a).

S. 16(1)(ae)  
inserted by  
No. 47/2010  
s. 89(a).

- (1) The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules of court for or with respect to the following—
- (a) any matter dealt with in the Rules referred to in subsection (5);
  - (ab) furthering the overarching purpose set out in the **Civil Procedure Act 2010** and the conduct of civil proceedings in accordance with the principles set out in that Act, including the overarching obligations;
  - (ac) the conduct of civil proceedings and parties to civil proceedings generally, including, but not limited to, the imposition of limits, restrictions or conditions on any party in respect of any aspect of the conduct of civil proceedings;
  - (ad) case management;
  - (ae) any other matter or thing required or permitted by or under the **Civil Procedure Act 2010** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;
  - (b) the prescription of the civil proceedings or class of civil proceedings which may be dealt with by the Court constituted by a registrar;
  - (c) the prescription of any venue of the court as a civil registry court;

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- (d) appeals in civil proceedings by way of re-hearing or otherwise to the Court constituted by a magistrate from the Court constituted by a registrar;
- (e) the payment of money into and out of court in civil proceedings and the investment of that money;
- (ea) the service of documents in civil proceedings, including service outside Australia; **S. 16(1)(ea) inserted by No. 10/1999 s. 22.**
- (f) any matter relating to the practice and procedure of the Court in civil proceedings;
- (fa) the reference of any civil proceeding or of any part of a civil proceeding to mediation; **S. 16(1)(fa) inserted by No. 64/1996 s. 30(1)(b).**
- (fb) the referral of any civil proceeding, or any part of a civil proceeding, for a pre-hearing conference and the conduct of pre-hearing conferences; **S. 16(1)(fb) inserted by No. 51/2000 s. 4.**
- (fc) judicial resolution conferences, including, but not limited to the practice and procedure of the Court in relation to judicial resolution conferences; **S. 16(1)(fc) inserted by No. 50/2009 s. 14.**
- (fd) without limiting paragraphs (fa), (fb) and (fc), the referral, direction or ordering of parties to a civil proceeding to any form of appropriate dispute resolution, whether with or without the consent of the parties; **S. 16(1)(fd) inserted by No. 47/2010 s. 89(b).**
- (g) any matter relating to the enforcement of orders made by the Court in civil proceedings;

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 2—The Magistrates' Court of Victoria

s. 16

S. 16(1)(h)  
inserted by  
No. 33/1994  
s. 5(1).

- (h) the storage, disposal or destruction of documents—
  - (i) filed or lodged with the appropriate registrar in civil proceedings; or
  - (ii) issued out of the Court in civil proceedings and kept by the principal registrar.

S. 16(1A)  
inserted by  
No. 19/2005  
s. 7(2).

- (1A) The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules of court for or with respect to the following—
  - (a) prescribing by scale or otherwise the costs of and incidental to criminal proceedings in the Court;

S. 16(1A)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.17).

- (b) prescribing a method for the electronic filing of charge-sheets;
- (c) the form in which process may be issued out of the Court and the manner in which it may be authenticated, stored, transmitted or otherwise dealt with;

S. 16(1A)(ca)  
inserted by  
No. 8/2008  
s. 11,  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.18).

- (ca) any matter relating to sentence indications under Division 3 of Part 3.3 of Chapter 3 of the **Criminal Procedure Act 2009**;
- (d) the manner in which orders may be authenticated;
- (e) any matter relating to the practice and procedure of the Koori Court Division of the Court;
- (f) the transfer of proceedings to and from the Koori Court Division of the Court;

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- (g) any matter relating to the practice and procedure of the Family Violence Court Division of the Court;
- (h) the transfer of proceedings to and from the Family Violence Court Division of the Court;
- (ha) the causes of action or claims, or classes of causes of action or claims, or proceedings or classes of proceedings, that may be heard and determined in the Neighbourhood Justice Division of the Court; **S. 16(1A)(ha) inserted by No. 51/2006 s. 5.**
- (hb) any matter relating to the practice and procedure of the Neighbourhood Justice Division of the Court; **S. 16(1A)(hb) inserted by No. 51/2006 s. 5.**
- (hc) the transfer of proceedings to and from the Neighbourhood Justice Division of the Court; **S. 16(1A)(hc) inserted by No. 51/2006 s. 5.**
- (hd) any matter relating to the practice and procedure of the Assessment and Referral Court List; **S. 16(1A)(hd) inserted by No. 12/2010 s. 6.**
- (he) the transfer of proceedings to and from the Assessment and Referral Court List; **S. 16(1A)(he) inserted by No. 12/2010 s. 6.**
- (i) the procedure to be followed on a proceeding held under an order made under Part 4.3 of Chapter 4 of the **Criminal Procedure Act 2009**; **S. 16(1A)(i) amended by No. 68/2009 s. 97(Sch. item 82.19).**
- (j) any matter relating to the practice and procedure of the Court in committal proceedings;
- \* \* \* \* \*
- S. 16(1A)(k) repealed by No. 68/2009 s. 97(Sch. item 82.20).**

S. 16(1A)(la)  
inserted by  
No. 38/2008  
s. 8,  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.21).

S. 16(1A)(m)  
amended by  
No. 12/2006  
s. 169(c).

S. 16(1A)(p)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 32).

- (l) forms to be used in committal proceedings;
- (la) prescribing persons or classes of persons for the purposes of item 30 of Schedule 3 to the **Criminal Procedure Act 2009**;
- (m) prescribing the venue of the Court at which any particular proceeding or class of proceeding or procedure set out in the **Infringements Act 2006** is to be brought;
- (n) prescribing the rules, practice and procedure applicable to the execution of a warrant to seize property issued for the enforcement of an order made by the Court in a criminal proceeding;
- (o) the storage, disposal or destruction of documents—
  - (i) filed or lodged with the appropriate registrar in criminal proceedings; or
  - (ii) issued out of the Court in criminal proceedings and kept by the principal registrar;
- (p) requirements for the purposes of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958** for or with respect to—
  - (i) the form of audio visual or audio link;
  - (ii) the equipment, or class of equipment, used to establish the link;
  - (iii) the layout of cameras;
  - (iv) the standard, or speed, of transmission;
  - (v) the quality of communication;
  - (vi) any other matter relating to the link;

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- (q) applications to the Court under Division 2 or 3 of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**;
- (r) any matter relating to the practice and procedure of the Court under Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**;
- (s) the forms to be used in criminal proceedings;
- (t) the matters to be considered in determining the last known place of residence or business of a person for the purpose of service of a document on the person in a criminal proceeding;
- (u) the recording of proceedings in the Court;
- (v) generally, any matter relating to the practice and procedure of the Court in criminal proceedings.
- (1AB) Rules made under subsection (1A) must not be inconsistent with the **Criminal Procedure Act 2009**.
- (1B) Without limiting any other power to make rules of court conferred by this or any other Act, the Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules of court for or with respect to generally prescribing any matter or thing required or permitted by this Act to be prescribed by rules of court or necessary to be prescribed by rules of court to give effect to this Act.
- (1C) In exercising a power conferred by subsection (1A)(j), (k) or (l) to make rules, the Chief Magistrate and the Deputy Chief Magistrates must have regard to the interests of the community in

S. 16(1A)(q) amended by No. 69/2009 s. 54(Sch. Pt 2 item 32).

S. 16(1A)(r) amended by No. 69/2009 s. 54(Sch. Pt 2 item 32).

S. 16(1A)(t) substituted by No. 68/2009 s. 97(Sch. item 82.22).

S. 16(1AB) inserted by No. 68/2009 s. 97(Sch. item 82.23).

S. 16(1B) inserted by No. 19/2005 s. 7(2).

S. 16(1C) inserted by No. 19/2005 s. 7(2).

**s. 16**

ensuring the prompt and efficient disposal of criminal proceedings.

**S. 16(1D)**  
inserted by  
No. 19/2005  
s. 7(2).

(1D) A power conferred by this Act to make rules may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
- (b) so as to make, as respects the cases in relation to which it is exercised—
  - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
  - (ii) any such provision either unconditionally or subject to any specified condition.

**S. 16(1E)**  
inserted by  
No. 19/2005  
s. 7(2).

(1E) Rules made under this Act may be made so as to—

- (a) require a matter affected by the rules to be approved by or to the satisfaction of a specified court official or a specified class of court official; and
- (b) confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
- (c) provide in a specified case or class of case for the exemption of proceedings or a class of proceeding from any of the provisions of the rules, whether unconditionally or on

specified conditions and either wholly or to such an extent as is specified.

- (2) The power of the Chief Magistrate together with 2 or more Deputy Chief Magistrates to jointly make rules of court, whether that power is conferred by this or any other Act, is subject to the rules being disallowed by a House of the Parliament in accordance with section 23 of the **Subordinate Legislation Act 1994**.

S. 16(2)  
substituted by  
No. 64/1996  
s. 30(2).

\* \* \* \* \*

S. 16(3)  
repealed by  
No. 64/1996  
s. 30(2).

\* \* \* \* \*

S. 16(4)  
repealed by  
No. 19/2005  
s. 9(1).

- (5) The proposed Magistrates' Court Civil Procedure Rules 1989 approved by a majority of the magistrates on 17 March 1989—
- (a) are for all purposes (including the purposes of the **Subordinate Legislation Act 1962**) to be treated; and
  - (b) have effect; and
  - (c) may be revoked or amended—

as if they had been made under this Act on the day on which this Act received the Royal Assent.

**16A Practice notes**

- (1) The Chief Magistrate may from time to time issue practice directions, statements or notes for the Court in relation to civil or criminal proceedings or any class of civil or criminal proceedings.

S. 16A  
inserted by  
No. 64/1996  
s. 31.

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 2—The Magistrates' Court of Victoria

**s. 16A**

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- (2) Practice directions, statements or notes issued under subsection (1) must not be inconsistent with any provision made by or under this or any other Act.
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**PART 2A—JUDICIAL REGISTRARS**

Pt 2A  
(Heading and  
ss 16B–16K)  
inserted by  
No. 19/2005  
s. 5.

**16B Guidelines relating to the appointment of judicial registrars**

S. 16B  
inserted by  
No. 19/2005  
s. 5.

- (1) The Chief Magistrate may, in consultation with the Attorney-General—
  - (a) prepare guidelines relating to the appointment of judicial registrars of the Court; and
  - (b) from time to time amend or revoke any guidelines prepared under paragraph (a).
- (2) The Chief Magistrate must, as soon as practicable after preparing, amending or revoking any guidelines under subsection (1), cause a copy of the guidelines or the amendment or notice of the revocation (as the case requires) to be given to the Attorney-General.

**16C Appointment of judicial registrars**

S. 16C  
inserted by  
No. 19/2005  
s. 5.

- (1) The Chief Magistrate may, at any time, having regard to any guidelines in force under section 16B(1), recommend to the Attorney-General that a judicial registrar, or more than one judicial registrar, of the Court be appointed by the Governor in Council.
- (2) The Attorney-General, on receiving a recommendation under subsection (1), may recommend to the Governor in Council that a judicial registrar, or more than one judicial registrar, of the Court be appointed under subsection (3).

S. 16C(2)  
amended by  
No. 34/2010  
s. 50.

s. 16D

- (3) The Governor in Council, on the recommendation of the Attorney-General, may appoint a person as a judicial registrar of the Court for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (4) A person is not eligible for appointment as a judicial registrar unless he or she is—
  - (a) an Australian lawyer within the meaning of the **Legal Profession Act 2004**; or
  - (b) enrolled as a legal practitioner of the High Court of Australia.
- (5) A judicial registrar may be appointed on a full-time or part-time basis.
- (6) A judicial registrar, although not appointed on a part-time basis, may, by agreement in writing entered into with the Chief Magistrate, undertake the duties of a judicial registrar on a part-time basis.
- (7) A judicial registrar is eligible for re-appointment.
- (8) The **Public Administration Act 2004** does not apply to a judicial registrar in respect of the office of judicial registrar.

S. 16C(4)(a)  
substituted by  
No. 19/2005  
s. 6.

S. 16D  
inserted by  
No. 19/2005  
s. 5.

#### 16D Terms and conditions of appointment

- (1) A judicial registrar is entitled to receive the remuneration and allowances that are fixed in respect of him or her from time to time by the Governor in Council.
- (2) Except with the approval of the Attorney-General, a judicial registrar must not engage in legal practice, undertake paid employment or conduct a business, trade or profession of any kind.

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- (3) A judicial registrar must disclose to the Chief Magistrate in writing any direct or indirect pecuniary interest that he or she has or acquires that could conflict with the proper performance of the duties of the office of judicial registrar.
  - (4) Despite any provision to the contrary made by or under any other Act, a person who has held the office of judicial registrar is entitled to have his or her service in that office taken into account in computing the period of service which entitles public officials (within the meaning of the **Public Administration Act 2004**) to be granted long service leave or other leave entitlements, whether his or her service in the office of judicial registrar is before or after any period of service as such a public official.

**16E Resignation from office**

A judicial registrar may resign from office by delivering to the Governor a signed letter of resignation.

S. 16E  
inserted by  
No. 19/2005  
s. 5.

**16F Suspension from office**

- (1) The Chief Magistrate, with the approval of the Attorney-General, may suspend a judicial registrar from office, if the Chief Magistrate believes that there may be grounds for removal of the judicial registrar from office.
- (2) A judicial registrar who is suspended under this section remains entitled to his or her remuneration and allowances as judicial registrar during the period of suspension.

S. 16F  
inserted by  
No. 19/2005  
s. 5.

s. 16G  
inserted by  
No. 19/2005  
s. 5.

### 16G Investigation of judicial registrar

- (1) As soon as practicable after the Chief Magistrate suspends a judicial registrar from office under section 16F, the Attorney-General must appoint a person nominated by the Chief Magistrate to undertake an investigation into the judicial registrar's conduct.
- (2) A person appointed under subsection (1) must—
  - (a) investigate the judicial registrar's conduct; and
  - (b) report to the Attorney-General on the investigation; and
  - (c) give a copy of the report to the judicial registrar and the Chief Magistrate.
- (3) A report under subsection (2)(b) may include a recommendation that the judicial registrar be removed from office.
- (4) After receiving a report under subsection (2)(b) recommending removal, the Attorney-General, after consulting the Chief Magistrate, may recommend to the Governor in Council that the judicial registrar be removed from office.
- (5) The person who conducted the investigation and the Attorney-General may only recommend that a judicial registrar be removed on the ground of proved misbehaviour or incapacity.
- (6) The Attorney-General must not make a recommendation under subsection (4) unless the judicial registrar has been given a reasonable opportunity to make written and oral submissions to the person who conducted the investigation and the Chief Magistrate.

- (7) In making a recommendation under subsection (4), the Attorney-General is entitled to rely on any findings contained in the report under subsection (2).
- (8) If the Attorney-General decides not to make a recommendation under subsection (4)—
- (a) the Attorney-General must inform the Chief Magistrate as soon as practicable after receiving the report under subsection (2)(b); and
  - (b) the Chief Magistrate must lift the suspension.

#### **16H Removal of judicial registrar from office**

The Governor in Council may remove a judicial registrar from office on the recommendation of the Attorney-General under section 16G but not otherwise.

S. 16H  
inserted by  
No. 19/2005  
s. 5.

#### **16I Rules of Court**

The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules of court for or with respect to—

- (a) the prescription of the proceedings or class of proceedings which may be dealt with by the Court constituted by a judicial registrar;
- (b) delegating to the judicial registrars all or any of the powers of the Court except the power—
  - (i) to impose a sentence of imprisonment or of detention in a youth justice centre or youth residential centre; or

S. 16I  
inserted by  
No. 19/2005  
s. 5.

S. 16I(b)(i)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 22.2).

s. 16J

S. 16(b)(ii)  
repealed by  
No. 65/2011  
s. 107(Sch.  
item 8.1).

\* \* \* \* \*

(iii) to make a drug treatment order within the meaning of the **Sentencing Act 1991**; or

S. 16(b)(iv)  
amended by  
No. 69/2005  
s. 28.

(iv) to make a hospital security order within the meaning of the **Sentencing Act 1991**; or

S. 16(b)(v)  
amended by  
No. 65/2011  
s. 107(Sch.  
item 8.2).

(v) to hear and determine an appeal made to the Court; or

S. 16(b)(vi)  
inserted by  
No. 65/2011  
s. 107(Sch.  
item 8.3).

(vi) to make a community correction order within the meaning of the **Sentencing Act 1991**.

S. 16J  
inserted by  
No. 19/2005  
s. 5.

**16J Performance of duties by judicial registrar**

- (1) A judicial registrar must not hear, or continue to hear, a proceeding that the judicial registrar considers for any reason inappropriate for hearing and determination by the Court constituted by a judicial registrar and must make appropriate arrangements for the proceeding to be heard and determined by the Court constituted by a magistrate.
- (2) A judicial registrar, in the performance of his or her duties as a judicial registrar, is not subject to the direction or control of any person or body.
- (3) A judicial registrar has, in the performance of his or her duties as a judicial registrar, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

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**16K Review of decisions of judicial registrar**

**S. 16K  
inserted by  
No. 19/2005  
s. 5.**

- (1) The Court constituted by a magistrate may direct that the hearing and determination of a proceeding by the Court constituted by a judicial registrar be reviewed by the Court constituted by a magistrate.
  - (2) A direction may be given under subsection (1) at the request of a party to the proceeding or by the Court of its own motion.
  - (3) A review under this section is to be conducted as a hearing de novo.
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**PART 3—OFFICERS OF THE COURT**

**17 Employment of principal registrar, registrars and deputy registrars**

S. 17(1)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 118.2).

- (1) For the purposes of this Act and to assist in the administration of the Court there are to be employed under Part 3 of the **Public Administration Act 2004**—
- (a) a principal registrar; and
  - (b) as many registrars and deputy registrars as are necessary.

S. 17(1A)  
inserted by  
No. 10/1999  
s. 23,  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 118.2).

- (1A) The Chief Magistrate may, by notice given to the Secretary, specify qualifications (including training, skill and experience) required to be held, or examinations in specified subjects required to be passed, by any person seeking to be employed under Part 3 of the **Public Administration Act 2004** as a registrar or deputy registrar.

S. 17(1B)  
inserted by  
No. 10/1999  
s. 23,  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 118.2).

- (1B) The Secretary, in exercising a power to employ a person under Part 3 of the **Public Administration Act 2004** as a registrar or deputy registrar, shall have regard to any notice given by the Chief Magistrate under subsection (1A).
- (2) The principal registrar, registrars and deputy registrars have the duties, powers and functions provided by this Act, the regulations and the Rules.
- (3) The principal registrar may, by instrument, delegate to any registrar or class of registrars any function or power of the principal registrar under this Act, the regulations or the Rules, except this power of delegation.

- (4) A deputy registrar may, subject to this Act, the regulations and the Rules and to any directions of a registrar, exercise any of the powers or perform any of the functions of a registrar.

**17A Appointment of Aboriginal elders or respected persons**

S. 17A  
inserted by  
No. 27/2002  
s. 7.

- (1) The Secretary may appoint a person who is a member of the Aboriginal community as an Aboriginal elder or respected person for the purpose of performing functions in relation to the Koori Court Division of the Court as set out in this Act.
- (2) An Aboriginal elder or respected person holds office for the period, and on the terms and conditions, determined by the Secretary and specified in the instrument of appointment.
- (3) An Aboriginal elder or respected person may resign from office by writing signed by him or her and delivered to the Secretary.

**18 Register**

- (1) The principal registrar must cause a register to be kept of all the orders of the Court and of such other matters as are directed by this Act or the Rules to be entered in the register.
- (2) An order made by the Court must be authenticated by the person who constituted the Court.
- (3) Any person may, subject to any order made under section 126 and on payment of the prescribed fee, inspect that part of the register that contains the final orders of the Court.
- (4) A party to a proceeding may inspect without charge that part of the register that relates to that proceeding.

- (5) A document purporting to be an extract from the register and purporting to be signed by a registrar who certifies that in his or her opinion the extract is a true extract from the register is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters appearing in the extract.

### **19 Offence to publish certain information concerning proceedings**

A person must not, in the course of a business of publishing information concerning debtors, publish or cause to be published any information concerning the commencement of a proceeding for debt so as to identify the defendant before a final order is made in the proceeding.

Penalty: 100 penalty units.

### **19A Recording of proceedings**

The principal registrar must ensure that all proceedings in the Court are recorded in accordance with the Rules.

### **20 Process**

- (1) Process may only be issued out of the Court by a registrar, except where otherwise provided by or under this or any other Act.
- (2) The principal registrar must, subject to the regulations, keep the original of all process issued out of the Court and must issue or cause to be issued as many copies as are necessary.
- (3) Process issued by a registrar may be recalled and cancelled by—
- (a) that registrar; or
  - (b) if that registrar is dead or has ceased to hold office or cannot be located, a magistrate.

S. 19A  
inserted by  
No. 51/2000  
s. 5.

## 21 Powers of registrar

- (1) A registrar has the following powers in addition to those conferred on him or her by this or any other Act or the Rules—
- (a) power to issue any process out of the Court;
  - (b) power to administer an oath;
  - (c) if a person has been granted bail in relation to a criminal proceeding, power to extend the bail of the person attending on a day on which the criminal proceeding is listed before the Court;
  - (d) power to endorse a warrant to arrest in accordance with section 62;
  - (e) power to sign any licence or certificate which the Court is authorised to issue;
  - (f) power to hear and determine any application, and exercise any power or authority of the Court, under section 58, 59 or 60 of the **Supreme Court Act 1986**.
- (2) Subsection (1)(c) does not empower a registrar to vary the amount or conditions of bail.

S. 21(1)(c)  
substituted by  
No. 68/2009  
s. 97(Sch.  
item 82.24).

## 22 Fees

- (1) Subject to subsection (2), a registrar must demand and receive the prescribed fees.
- (2) The appropriate registrar may, having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay a prescribed fee in a civil proceeding, waive payment of that fee if, in his or her opinion, the payment of that fee by that person would cause him or her financial hardship and, in that case, that prescribed fee is not payable.

S. 22  
amended by  
No. 9/1995  
s. 11(3)(a).

S. 22(2)  
inserted by  
No. 9/1995  
s. 11(3)(b).

S. 22(3)  
inserted by  
No. 64/1996  
s. 32.

- (3) Subsections (1) and (2) do not apply to fees payable to the sheriff.

### **23 Extortion by and impersonation of court officials**

The following persons are guilty of an offence and liable to a fine of not more than 20 penalty units or to imprisonment for a term of not more than 2 years or to both—

- (a) a court official who extorts, demands, takes or accepts from any person any unauthorised fee or reward;
- (b) a court official who pretends to be the holder of an office or position in or in relation to the Court which he or she does not hold;
- (c) any person who is not a court official and who pretends to be a court official.

S. 24  
amended by  
No. 64/2010  
s. 64.

### **24 Protection of registrars**

The principal registrar, a registrar and a deputy registrar have, in the performance of their duties in good faith, the same protection and immunity as a magistrate has in the performance of his or her duties as a magistrate.

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**PART 4—WARRANTS AND CRIMINAL PROCEEDINGS**

**Division 1—Jurisdiction**

**25 Extent of jurisdiction**

(1) The Court has jurisdiction—

(a) to hear and determine all summary offences;  
and

(b) to hear and determine all indictable offences  
which may be heard and determined  
summarily; and

(c) to conduct committal proceedings into  
indictable offences and either—

(i) direct the accused to be tried and order  
that the accused be remanded in  
custody until trial or grant bail; or

**S. 25(1)(c)(i)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.25).**

(ii) discharge the accused; and

**S. 25(1)(c)(ii)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.25).**

(d) to make orders to enforce the payment of all  
fines which are, by any Act, directed to be  
recovered in the Court or for the recovery of  
which no provision is made.

(2) The jurisdiction given by subsection (1) is  
additional to any other jurisdiction given to the  
Court with respect to a criminal proceeding by or  
under any Act other than this Act.

(3) In a particular case, the jurisdiction given by  
subsection (1)(c) may be exercised concurrently  
with the jurisdiction of the Children's Court to  
conduct a committal proceeding if—

**S. 25(3)  
inserted by  
No. 7/2009  
s. 426 (as  
amended by  
No. 68/2009  
ss 46(a), 54(l)).**

S. 25(3)(b)(ii)  
amended by  
No. 30/2010  
s. 85.

- (a) the charges against each accused could properly be joined in the same indictment; and
- (b) the accused who is a child—
  - (i) is of or over the age of 15 years at the time the proceeding against the child for the offence is commenced; and
  - (ii) is charged with murder, attempted murder, manslaughter, child homicide, defensive homicide, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and
- (c) the Court makes an order under subsection (4) in relation to the accused who is not a child and the Children's Court makes an order under section 516A(2) of the **Children, Youth and Families Act 2005** in relation to the accused who is a child.

S. 25(4)  
inserted by  
No. 7/2009  
s. 426 (as  
amended by  
No. 68/2009  
ss 46(b), 54(l)).

- (4) The Court may order that joint committal proceedings in relation to a particular accused are appropriate having regard to—
  - (a) the age of the child; and
  - (b) the effect on victims of the offence charged if the committal proceedings were not conducted jointly; and
  - (c) the estimated duration of the committal proceedings if conducted jointly; and
  - (d) the number of witnesses that would be cross-examined by both accused; and
  - (e) any other matter considered relevant.

- 
- (5) The Court may make an order under subsection (4) on the application of a party or on its own motion.
- (6) Each party is entitled to be present and may address the Court when the Court is considering the making of an order under subsection (4).
- (7) If the Court makes an order under subsection (4), the Court may adjourn the proceeding for a period not exceeding 28 days to enable the Children's Court to determine whether joint committal proceedings are appropriate in the particular case.
- (8) If joint committal proceedings are conducted under subsection (3)—
- (a) the **Children, Youth and Families Act 2005** applies as far as practicable to the child; and
  - (b) the **Criminal Procedure Act 2009** applies as far as practicable to the other accused—
- with any necessary modifications to ensure that the joint committal proceedings are conducted fairly and efficiently.
- S. 25(5) inserted by No. 7/2009 s. 426 (as amended by No. 68/2009 s. 54(l)).
- S. 25(6) inserted by No. 7/2009 s. 426 (as amended by No. 68/2009 s. 54(l)).
- S. 25(7) inserted by No. 7/2009 s. 426 (as amended by No. 68/2009 s. 54(l)).
- S. 25(8) inserted by No. 7/2009 s. 426 (as amended by No. 68/2009 ss 46(c), 54(l)).

Magistrates' Court Act 1989  
 No. 51 of 1989  
 Part 4—Warrants and Criminal Proceedings

s. 26

Pt 4 Div. 2 (Heading) repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).	*	*	*	*	*
Pt 4 Div. 2 Subdiv. 1 (Heading) repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).	*	*	*	*	*
S. 26 amended by Nos 34/1990 s. 4(Sch. 3 item 3), 33/1994 s. 6(1)(2), 35/2002 s. 12, 50/2006 s. 15(1)–(3), repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).	*	*	*	*	*
S. 27 repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).	*	*	*	*	*

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 4—Warrants and Criminal Proceedings

s. 29

\* \* \* \* \*

S. 28  
amended by  
Nos 33/1994  
s. 6(3),  
50/2006  
s. 15(4),  
repealed by  
No. 7/2009  
s. 427(1)(c) (as  
amended by  
No. 68/2009  
s. 54(m)).

**Division 2—Procedure**

Pt 4 Div. 2  
(Heading)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 82.26).

**29 Magistrate may exercise registrar's powers**

A magistrate may exercise any of the powers of a registrar for the purpose of issuing criminal process.

\* \* \* \* \*

S. 30  
amended by  
Nos 33/1994  
s. 7, 64/1996  
s. 33, 35/2002  
s. 13, 50/2006  
s. 16, 8/2008,  
s. 14,  
repealed by  
No. 7/2009  
s. 427(1)(c) (as  
amended by  
No. 68/2009  
s. 54(m)).

\* \* \* \* \*

Ss 31, 32  
repealed by  
No. 7/2009  
s. 427(1)(c) (as  
amended by  
No. 68/2009  
s. 54(m)).

Magistrates' Court Act 1989  
 No. 51 of 1989  
 Part 4—Warrants and Criminal Proceedings

s. 33

	*	*	*	*	*
<p><b>S. 33</b>                  amended by                  No. 50/2006                  s. 17,                  repealed by                  No. 7/2009                  s. 427(1)(c) (as                  amended by                  No. 68/2009                  s. 54(m)).</p>					
<p><b>S. 34</b>                  amended by                  Nos 92/2000                  s. 4(1),                  44/2001                  s. 3(Sch.                  item 77.1),                  repealed by                  No. 7/2009                  s. 427(1)(c) (as                  amended by                  No. 68/2009                  s. 54(m)).</p>	*	*	*	*	*
<p><b>S. 35</b>                  amended by                  No. 92/2000                  s. 4(2),                  repealed by                  No. 7/2009                  s. 427(1)(c) (as                  amended by                  No. 68/2009                  s. 54(m)).</p>	*	*	*	*	*
<p><b>S. 36</b>                  amended by                  No. 50/2006                  s. 18,                  repealed by                  No. 7/2009                  s. 427(1)(c) (as                  amended by                  No. 68/2009                  s. 54(m)).</p>	*	*	*	*	*

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 4—Warrants and Criminal Proceedings

s. 37

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*	*	*	*	*	<b>S. 37</b> amended by No. 108/2003 s. 22(1), repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).
*	*	*	*	*	<b>S. 37A</b> inserted by No. 35/2002 s. 14, repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).
*	*	*	*	*	<b>S. 38</b> amended by Nos 35/1996 s. 453(Sch. 1 item 53.3), 69/1997 s. 26(1), 32/2006 s. 88(1), 50/2006 s. 19, 87/2009 s. 60(2), repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).
*	*	*	*	*	<b>S. 38A</b> inserted by No. 50/2006 s. 20, repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 4—Warrants and Criminal Proceedings

s. 43

<p>Ss 39, 40 repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).</p>	*	*	*	*	*
<p>S. 41 amended by Nos 34/1990 s. 4(Sch. 3 item 4), 35/2002 s. 15, 50/2006 s. 21(1)(2), repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).</p>	*	*	*	*	*
<p>S. 42 repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).</p>	*	*	*	*	*

### 43 Witness summonses

- (1) The Court or a registrar may issue the following witness summonses—
  - (a) summons to give evidence;
  - (b) summons to produce documents or things;
  - (c) summons to give evidence and produce documents or things.
- (2) Any party to a criminal proceeding in the Court may apply for the issue of a witness summons.
- (3) A witness summons may be directed to any person who appears to the Court or registrar issuing the summons to be likely—
  - (a) to be able to give material evidence for any party to the proceeding; or

- (b) to have in the person's possession or control any documents or things which may be relevant on the hearing of the proceeding; or
  - (c) both to be able to give material evidence and to have in the person's possession or control any relevant documents or things.
- (4) A witness summons must require the person to whom it is directed to attend at a specified venue of the Court on a certain date and at a certain time—
- (a) to give evidence in the proceeding; or
  - (b) to produce for examination at the hearing any documents or things described in the summons that are in the person's possession or control; or
  - (c) both to give evidence and produce for examination any documents or things described in the summons that are in the person's possession or control.
- (5) A witness summons must be served a reasonable time before the day on which the proceeding is listed before the Court.
- (5A) A witness summons must be served by—
- (a) giving a copy of the summons to the person to be served; or
  - (b) if the person does not accept the copy, putting the copy down in the person's presence and telling the person the nature of the summons; or
  - (c) leaving a copy of the summons for the person at the person's last known or usual place of residence or business with a person who appears to be of or over the age of 16 years.

S. 43(5)  
substituted by  
No. 68/2009  
s. 97(Sch.  
item 82.27).

S. 43(5A)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 82.27).

S. 43(5B)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 82.27).

- (5B) If the person to be served is a company or registered body (within the meaning of the Corporations Act), a witness summons may be served on the company or body in accordance with section 109X or 601CX of that Act, as the case requires.
- (6) A person to whom a witness summons is directed is, subject to subsection (7), excused from complying with the summons unless conduct money is given or tendered to the person at the time of service of the summons or a reasonable time before the return date.
- (7) It is not necessary to give or tender conduct money to a person to whom a witness summons is directed if the person will not reasonably incur any expenses in complying with the summons.
- (8) The Court may direct that a witness who has attended before the Court in answer to a witness summons is entitled to receive from the party who applied for the issue of the witness summons further conduct money for each day of attendance.
- (9) Nothing in this section—

\* \* \* \* \*

S. 43(9)(a)  
repealed by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.3).

- (b) derogates from the power of the Court to certify that a witness be paid his or her expenses of attending before the Court.

#### 44 Production before date for attendance

- (1) Unless the Court or the registrar issuing the summons otherwise directs, a summons to produce documents or things or a summons to give evidence and produce documents or things permits the person to whom the summons is directed, instead of producing the document or

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thing at the hearing, to produce it, together with a copy of the summons, to the appropriate registrar not later than 2 days before the first day on which production is required.

- (2) If a document or thing is produced to the appropriate registrar under subsection (1), he or she must—
  - (a) if requested to do so, give a receipt to the person producing the document or thing; and
  - (b) produce the document or thing as the Court directs.
- (3) The production of a document or thing to the appropriate registrar under subsection (1) in answer to a summons to give evidence and produce documents or things does not remove the requirement on the person to whom the summons is directed to attend for the purpose of giving evidence.

#### **45 Attendance of witnesses on adjournment**

A person whose attendance before the Court in a criminal proceeding has been required by witness summons must—

- (a) subject to section 43(6), attend at the time and place specified in the summons; and
- (b) if the proceeding is adjourned, attend at the time and place to which the proceeding has been adjourned, without the issue of a further summons—

until excused by the Court.

Magistrates' Court Act 1989  
 No. 51 of 1989  
 Part 4—Warrants and Criminal Proceedings

s. 46

	*	*	*	*	*
<p><b>S. 46</b>          amended by          No. 35/1996          s. 453(Sch. 1          item 53.3),          repealed by          No. 7/2009          s. 427(1)(c) (as          amended by          No. 68/2009          s. 54(m)).</p>					
<p><b>S. 47</b>          amended by          No. 35/1996          s. 453(Sch. 1          items 53.3,          53.4),          repealed by          No. 7/2009          s. 427(1)(c) (as          amended by          No. 68/2009          s. 54(m)).</p>	*	*	*	*	*
<p><b>S. 48</b>          repealed by          No. 7/2009          s. 427(1)(c) (as          amended by          No. 68/2009          s. 54(m)).</p>	*	*	*	*	*
<p><b>S. 49</b>          amended by          Nos 46/1998          s. 7(Sch. 1) (as          amended by          No. 12/1999          s. 3(Sch. 1          item 19)),          48/2006          s. 42(Sch.          items 22.3,          22.4),          repealed by          No. 7/2009          s. 427(1)(c) (as          amended by          No. 68/2009          s. 54(m)).</p>	*	*	*	*	*

**50 Power to amend where there is a defect or error**

- (1) On the hearing of a proceeding the Court must not allow an objection to a warrant on account of any defect or error in it in substance or in form or for any variance between it and the evidence presented in the proceeding but the Court may amend the warrant to correct the defect or error.
- (2) An order must not be set aside or quashed only because of a defect or error in form but the Court may amend the order to correct the defect or error.

S. 50(1) amended by No. 7/2009 s. 427(1)(e) (as amended by No. 68/2009 s. 54(m)).

\* \* \* \* \*

S. 50A inserted by No. 8/2008 s. 5, repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).

\* \* \* \* \*

Pt 4 Div. 2 Subdiv. 2 (Heading) repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).

\* \* \* \* \*

S. 51 amended by No. 33/1994 s. 27(1), repealed by No. 7/2009 s. 427(1)(c) (as amended by No. 68/2009 s. 54(m)).

s. 52

S. 52  
substituted by  
No. 33/1994  
s. 8.

## 52 Abettors in summary offences triable as principal offenders

A person who aids, abets, counsels or procures the commission of a summary offence may be dealt with and punished as a principal offender either together with the principal offender or before or after the principal offender is charged with the principal offence.

Pt 4 Div. 2  
Subdiv. 3  
(Heading and  
ss 53-55)  
amended by  
Nos 49/1991  
s. 119(5)(6),  
48/1997  
s. 65(1)(2),  
69/1997 s. 27,  
50/2006  
ss 22(1)(2), 23,  
repealed by  
No. 7/2009  
s. 427(1)(c) (as  
amended by  
No. 68/2009  
s. 54(m)).

\* \* \* \* \*

Pt 4 Div. 2  
Subdiv. 4  
(Heading and  
s. 56)  
amended by  
Nos 64/1990  
s. 20(Sch.  
item 4.2),  
43/1994  
s. 56(Sch.  
item 3.1),  
10/1999  
ss 5, 8(2)(3),  
92/2000  
ss 5, 6,  
48/2006  
s. 42(Sch.  
item 22.4),  
50/2006  
ss 24, 25,  
repealed by  
No. 7/2009  
s. 427(1)(c) (as  
amended by  
No. 68/2009  
s. 54(m)).

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**Division 3—Warrants**

**Subdivision 1—General**

**57 Warrants**

- (1) The following warrants may be issued—
- (a) warrant to arrest;
  - (b) remand warrant;
  - (c) search warrant;
  - (d) warrant to seize property;
  - (e) warrant to imprison;
  - (f) warrant to detain in a youth justice centre;

S. 57(1)(f)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 22.4).

- (g) infringement warrant.

S. 57(1)(g)  
inserted by  
No. 33/1994  
s. 9(1),  
substituted by  
No. 32/2006  
s. 88(2).

- (2) The person issuing a warrant must cause the prescribed particulars of the warrant to be entered in the register.
- (3) A warrant must name or otherwise describe the person or property against whom or which it is issued.
- (4) All warrants, other than a search warrant, may be issued by a registrar or a magistrate.
- (5) A search warrant may only be issued by a magistrate.
- (6) Remand warrants may be issued by a bail justice.

s. 57A

(7) A judge of the Supreme Court or judge of the County Court may exercise any power conferred on a magistrate by or under this Act with respect to the issue, recall or cancellation of a warrant or duplicate copy of a warrant.

S. 57(7A)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 82.28),  
amended by  
No. 30/2010  
s. 86(1).

(7A) The registrar of the County Court may issue a warrant to imprison in the circumstances set out in sections 266(3A) and 267(1A) of the **Criminal Procedure Act 2009**.

S. 57(7B)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 82.28),  
amended by  
No. 30/2010  
s. 86(2).

(7B) The registrar of the County Court or the prothonotary of the Supreme Court may issue a warrant to detain in a youth justice centre or a youth residential centre in the circumstances set out in sections 430C(5) and 430D(1A) of the **Children, Youth and Families Act 2005**.

(8) A warrant must be executed by the use of a copy of the warrant, known as the execution copy, or by the use of a copy of the execution copy, including a copy transmitted by facsimile machine.

(9) The execution copy of a warrant must be in writing and must be signed or otherwise authenticated by the person issuing it.

(10) An execution copy of a warrant must be returned, when executed, to the Court.

S. 57A  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.4).

**57A Warrants to arrest issued under Evidence Act 2008**

The provisions of this Division relating to warrants to arrest extend and apply to a warrant to arrest issued under section 194 of the **Evidence Act 2008** except as otherwise provided in this Division.

## 58 Recall and cancellation of warrant

- (1) A warrant issued by a registrar, magistrate or bail justice may be recalled and cancelled by<sup>2</sup>—
- (a) that registrar, magistrate or bail justice; or
  - (b) if issued by a registrar, the registrar for the time being at the venue of the Court at which it was issued or except in the case of a warrant issued under section 80 of the **Infringements Act 2006**, any other registrar; or
  - (c) a magistrate.
- (1A) If a warrant has been recalled and cancelled under subsection (1), a fresh warrant may be issued for the same purpose as that for which the recalled warrant was issued.
- (2) A warrant to imprison or detain in a youth justice centre for non-payment of a fine (whether issued before or after the commencement of this section) or an infringement warrant is null and void if it has not been executed within the period of 5 years after a warrant of that type was first issued against the person named in the warrant for the purpose specified in the warrant<sup>3,4,5</sup>.
- (2A) If a warrant referred to in subsection (2) becomes null and void under that subsection, the fine in respect of which it was issued, together with any associated fees and costs, ceases to be enforceable or recoverable if no part of the fine had been paid before the date on which the warrant became null and void.
- (3) Nothing in subsection (2) or (2A) prevents the issue, with the leave of the Court, of a fresh warrant for the same purpose as that for which a warrant that has become null and void under subsection (2) was issued<sup>6</sup>.

S. 58(1)(b)  
amended by  
Nos 44/1997  
s. 29, 12/2006  
s. 169(d).

S. 58(1A)  
inserted by  
No. 70/1996  
s. 4.

S. 58(2)  
amended by  
Nos 33/1994  
s. 9(2),  
70/1996  
s. 5(1),  
32/2006  
s. 88(3),  
48/2006  
s. 42(Sch.  
item 22.4).

S. 58(2A)  
inserted by  
No. 70/1996  
s. 5(2).

S. 58(3)  
amended by  
No. 70/1996  
s. 5(3).

S. 58(4)  
inserted by  
No. 70/1996  
s. 5(4).

- (4) Despite subsection (2), if under subsection (3) a fresh warrant is issued, the fine in respect of which it was issued, together with any associated fees and costs, again becomes enforceable or recoverable as if there had been no cessation.

### 59 Duplicate warrants

S. 59(4)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 22.4).

- (1) If the execution copy of a warrant issued by a registrar, magistrate or bail justice is lost or destroyed before it is executed, a registrar or magistrate may issue a duplicate execution copy if satisfied by evidence on oath or by affidavit of the loss or destruction of the execution copy of the warrant.
- (2) A duplicate execution copy must bear on its face the word "Duplicate" and may be executed in all respects as if it were the execution copy of the warrant.
- (3) When a duplicate execution copy of a warrant is issued, the execution copy of the warrant becomes null and void and must, if located, be returned to the principal registrar.
- (4) If a person is in a prison, a police gaol or a youth justice centre in accordance with a warrant which has been executed and the execution copy of the warrant is lost or destroyed, a registrar or magistrate may issue a duplicate execution copy if satisfied by evidence on oath or by affidavit of the loss or destruction of the execution copy.

S. 59(5)  
amended by  
Nos 45/2001  
s. 43(a)(i)(ii),  
48/2006  
s. 42(Sch.  
item 22.4).

- (5) A duplicate execution copy issued under subsection (4) is sufficient authority for the person in whose legal custody the person is to keep the person in the prison, police gaol or youth justice centre until the end of the term specified in the warrant.

## 60 Effect of defect or error in certain warrants

- (1) A warrant to imprison, a warrant to detain in a youth justice centre, a remand warrant, a warrant to seize property or an infringement warrant<sup>7</sup> is not void only because of a defect or error in it if there is a valid order supporting it.
- (2) A person acting under a warrant to seize property or an infringement warrant<sup>8</sup> is not to be taken to be a trespasser from the beginning only because of a defect or error in it.

S. 60(1)  
amended by  
Nos 33/1994  
s. 9(3),  
48/2006  
s. 42(Sch.  
item 22.4),  
87/2009  
s. 60(3).

S. 60(2)  
amended by  
Nos 33/1994  
s. 9(4),  
87/2009  
s. 60(3).

### Subdivision 2—Warrant to arrest

## 61 Issue of warrant to arrest

- (1) A warrant to arrest in the first instance may be issued—

\* \* \* \* \*

S. 61(1)(a)  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.29).

\* \* \* \* \*

S. 61(1)(b)  
repealed by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.5).

(c) as authorised by any other Act.

- (2) An application for a warrant to arrest in the first instance must be supported by evidence on oath or by affidavit.
- (3) An affidavit supporting an application for a warrant to arrest in the first instance may be a copy of an affidavit transmitted by facsimile machine.

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 4—Warrants and Criminal Proceedings

s. 62

S. 61(4)  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.30).

\* \* \* \* \*

(5) A warrant to arrest other than in the first instance may be issued—

S. 61(5)(a)  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.31).

\* \* \* \* \*

S. 61(5)(b)  
repealed by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.5).

\* \* \* \* \*

S. 61(5)(c)  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.31).

\* \* \* \* \*

(d) as authorised by this or any other Act.

(6) A warrant to arrest other than in the first instance must include a statement of the reason for issuing the warrant.

Note to s. 61  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.6).

**Note**

Section 194 of the **Evidence Act 2008** provides for issuing warrants to arrest a witness who fails to appear.

**62 Endorsing a warrant for bail**

- (1) The person issuing a warrant to arrest against any person may endorse the warrant with a direction that that person must on arrest be released on bail as specified in the endorsement.
- (2) An endorsement under subsection (1) must fix the amounts in which the principal and the sureties, if any, are to be bound and the amount of any money or the value of any security to be deposited.

- (3) This section does not apply in respect of a warrant authorised to be issued under section 194 of the **Evidence Act 2008**.

S. 62(3)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.7).

### **63 Persons to whom warrant to arrest may be directed**

- (1) A warrant to arrest may be directed to—
- (a) a named member of the police force; or
  - (b) generally all members of the police force; or
  - (c) any other person authorised by law to execute a warrant to arrest.
- (2) A warrant to arrest directed to a named member of the police force may be executed by—
- (a) any member of the police force; or
  - (b) a protective services officer.
- (3) If a protective services officer arrests a person under subsection (2)(b), the protective services officer must hand the person into the custody of a member of the police force as soon as practicable after the person is arrested.

S. 63(2)  
substituted by  
No. 43/2011  
s. 35.

S. 63(3)  
inserted by  
No. 43/2011  
s. 35.

### **64 Authority conferred by warrant to arrest**

- (1) A warrant to arrest authorises the person to whom it is directed—
- (a) to break, enter and search any place where the person named or described in the warrant is suspected to be; and
  - (b) to arrest the person named or described in the warrant.
- (2) The person to whom a warrant to arrest is directed must cause the person named or described in the warrant when arrested—

s. 65

S. 64(2)(a)  
amended by  
No. 49/1990  
s. 5(a).

- (a) to be brought before a bail justice or the Court within a reasonable time of being arrested to be dealt with according to law; or
- (b) to be released on bail in accordance with the endorsement on the warrant.

(3) A person arrested on a warrant to arrest may be discharged from custody on bail under section 10 of the **Bail Act 1977**.

S. 64(4)  
inserted by  
No. 49/1990  
s. 5(b).

(4) In determining what constitutes a reasonable time for the purposes of subsection (2)(a) the matters specified in section 464A(4) of the **Crimes Act 1958** may be considered.

S. 64(4A)  
inserted by  
No. 70/2010  
s. 27(1).

(4A) If a person is brought before a bail justice or the Court in accordance with subsection (2)(a), the bail justice or the Court is not bound by the endorsement on the warrant when determining any matter in relation to bail.

S. 64(5)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.8),  
amended by  
No. 70/2010  
s. 27(2).

(5) Subsections (2), (3), (4) and (4A) do not apply in respect of a warrant authorised to be issued under section 194 of the **Evidence Act 2008**.

## 65 Arrest of person against whom warrant to arrest is issued

S. 65(1)  
amended by  
Nos 68/2009  
s. 97(Sch.  
item 82.32),  
43/2011  
s. 36(1).

(1) If a warrant to arrest a person who is an accused to a charge has been issued, any member of the police force, or any protective services officer on duty at a designated place, may arrest the person although the execution copy of the warrant is not at the time in the member's possession.

S. 65(1A)  
inserted by  
No. 43/2011  
s. 36(2).

(1A) If a protective services officer arrests a person under subsection (1), the protective services officer must hand the person into the custody of a member of the police force as soon as practicable after the person is arrested.

- (2) On the arrest of a person under subsection (1) by a member of the police force or on the handing of a person arrested by a protective services officer into the custody of a member of the police force under subsection (1A), the member of the police force must bring the person arrested before a bail justice or the Court within a reasonable time of being arrested or handed into the custody of the member of the police force (as the case may be) and the bail justice or the Court may—
- (a) if a fresh charge-sheet is filed to the effect of the offence or matter alleged in the warrant—
- (i) permit the person to go at large; or
  - (ii) admit the person to bail; or
  - (iii) in the case of the Court, hear and determine the proceeding for the offence; or
- (b) if a fresh charge-sheet is not filed to the effect of the offence or matter alleged in the warrant—
- (i) permit the person to go at large; or
  - (ii) admit the person to bail; or
  - (iii) remand the person in custody for a reasonable time pending execution of the warrant.
- (3) If a person has been arrested under subsection (1) and has been remanded in custody pending execution of the warrant and the warrant is not executed within a reasonable time, the Court must discharge the person from custody.

**S. 65(2)**  
amended by  
Nos 49/1990  
s. 5(c),  
43/2011  
s. 36(3).

**S. 65(2)(a)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.33).

**S. 65(2)(b)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.33).

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 4—Warrants and Criminal Proceedings

s. 65

- (4) If a warrant is executed by use of a copy other than the execution copy, the Court must—
- (a) if satisfied that the copy is a true copy of the execution copy—
    - (i) proceed as if the person had been arrested on the execution copy; and
    - (ii) order that the execution copy be returned to the principal registrar; or
  - (b) if not so satisfied, discharge the person from custody.
- (5) If a warrant is not executed and a fresh charge-sheet charging the offence alleged in the warrant is filed, the warrant is deemed to be void and of no effect and the Court must order its return to the principal registrar.
- (6) In determining what constitutes a reasonable time for the purposes of subsection (2) the matters specified in section 464A(4) of the **Crimes Act 1958** may be considered.

S. 65(5)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.34).

S. 65(6)  
amended by  
No. 49/1990  
s. 5(d).

S. 66  
repealed by  
No. 7/2009  
s. 427(1)(f) (as  
amended by  
No. 68/2009  
s. 54(m)).

S. 67  
amended by  
Nos 45/2001  
s. 43(b),  
48/2006  
s. 42(Sch.  
item 22.4),  
repealed by  
No. 7/2009  
s. 427(1)(f) (as  
amended by  
No. 68/2009  
s. 54(m)).

\* \* \* \* \*

\* \* \* \* \*

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**Subdivision 3—Warrant to imprison**

**68 Issue of warrant to imprison**

A warrant to imprison may be issued if—

- (a) the Court orders that a person be sentenced to a term of imprisonment; or
- (b) the Court orders that a person be sentenced to a term of imprisonment in default of payment of a fine or of any instalment under an instalment order; or
- (c) authorised by any other Act.

**69 Persons to whom warrant to imprison may be directed**

(1) A warrant to imprison may be directed to—

- (a) a named member of the police force; or
- (b) generally all members of the police force; or
- (ba) the sheriff; or

S. 69(1)(ba)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 5).

(bb) generally all prison officers; or

S. 69(1)(bb)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 5).

(c) any other person authorised by law to execute a warrant to imprison.

(2) A warrant to imprison directed to a named member of the police force may be executed by any member of the police force.

(3) A warrant to imprison directed to a named member of the police force or to generally all members of the police force may be executed by any prison officer.

S. 69(3)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 6).

S. 69(3A)  
inserted by  
No. 69/1997  
s. 28(1).

(3A) A warrant to imprison under section 68(b) to be directed to the sheriff may be issued, not in paper form, but by a magistrate or registrar signing a document containing the following particulars in relation to persons against whom a warrant is to be issued under that section and causing those particulars to be transferred electronically to the sheriff in accordance with the regulations, if any—

- (a) the name of the person in default;
- (b) the type of warrant;
- (c) the amount of the fine or instalment remaining unpaid;
- (d) the period for which, or the circumstances in which, the person in default is to be kept in custody under the warrant;
- (e) the date of issue of the warrant;
- (f) the name of the magistrate or registrar signing the document;
- (g) any other particulars that are prescribed.

S. 69(3B)  
inserted by  
No. 69/1997  
s. 28(1).

(3B) A warrant issued in accordance with subsection (3A)—

- (a) directs and authorises the sheriff to do all things that he or she would have been directed and authorised to do if a warrant containing the particulars referred to in subsection (3A) and directed to the sheriff had been issued in paper form under section 68(b) by the magistrate or registrar;
- (b) must not be amended, altered or varied after its issue, unless the amendment, alteration or variation is authorised by or under this or any other Act.

- (4) Subsections (4) to (7) of section 111 apply to a warrant to imprison directed to the sheriff under this Subdivision in the same manner as they apply to a warrant to seize property directed to the sheriff in a civil proceeding.

S. 69(4)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 6).

## 70 Directions in, and authority of, warrant to imprison

A warrant to imprison—

- (a) authorises the person to whom it is directed to break, enter and search any place where the person named in the warrant is suspected to be; and
- (b) directs and authorises the person to whom it is directed to take and safely convey the person named in the warrant—
- (i) to a prison; or
- (ii) if the warrant is issued under section 68(b), either to a prison or a police gaol;

S. 70(b)(ii)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 75).

\* \* \* \* \*

S. 70(b)(iii)  
repealed by  
No. 33/1994  
s. 9(5).<sup>9</sup>

and there to deliver the person to the officer in charge of the prison or police gaol; and

- (c) directs and authorises the Secretary to the Department of Justice or the Chief Commissioner of Police (as the case requires) or any other person into whose custody the person named in the warrant is transferred to receive that person into custody and safely keep that person—
- (i) for the period specified, or in the circumstances described, in the warrant; or

S. 70(c)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 9.1).

- (ii) until that person is otherwise removed or discharged from custody by due course of law.

**71 Reduction of imprisonment by payment of portion of fine**

- (1) If before the issue of a warrant to imprison for non-payment of a fine, it appears to the person issuing the warrant that part of the fine has been paid—
  - (a) the reduction in the amount of the fine payable must be stated in the warrant to imprison; and
  - (b) the term for which the person fined may be imprisoned must be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in the term as the amount paid bears to the whole amount of the fine.
- (2) Subsection (1) applies despite any provision (except section 26) of the **Imprisonment of Fraudulent Debtors Act 1958** to the contrary.
- (3) If after the issue but before the execution of a warrant to imprison for non-payment of a fine, it appears to the Court that part of the fine has been paid, the Court must—
  - (a) amend the warrant; and
  - (b) recall the execution copy of the warrant and amend it—in accordance with subsection (1).
- (4) Despite any provision (except section 26) of the **Imprisonment of Fraudulent Debtors Act 1958** to the contrary or anything in any warrant to imprison, if a person is imprisoned for non-payment of a fine—

- 
- (a) the whole or any part of the fine may be paid by or on behalf of that person to the officer in charge of the prison or police gaol in which that person is detained; and
- (b) the officer in charge must receive the payment and forward it without delay to the principal registrar.
- (5) If—
- (a) the whole amount of the fine; or
- (b) the amount remaining to be paid—
- is paid to the officer in charge of the prison or police gaol by or on behalf of the person imprisoned, the person imprisoned must be discharged if he or she is in custody for no other matter.
- (6) If part of the fine is paid to the officer in charge of the prison or police gaol by or on behalf of the person imprisoned—
- (a) the term of imprisonment for non-payment of the fine must be reduced having regard to the formula set out in subsection (1)(b); and
- (b) the officer in charge must—
- (i) amend the execution copy of the warrant; and
- (ii) receive the payment and forward it without delay to the principal registrar; and
- (c) at the end of the reduced term, the person imprisoned must be discharged if he or she is in custody for no other matter.

S. 72  
(Heading)  
inserted by  
No. 48/2006  
s. 42(Sch.  
item 22.5).  
S. 72  
amended by  
Nos 49/1991  
s. 119(7)  
(Sch. 4  
item 13.2),  
69/1992  
s. 35(a)(b),  
48/2006  
s. 42(Sch.  
item 22.6).

## 72 Provisions extend to detention in youth justice centre

If a person is directed under Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991** or under the **Children, Youth and Families Act 2005** to be detained in a youth justice centre or a youth residential centre, the provisions of this Subdivision and of any regulations with respect to warrants to imprison extend and apply, with any necessary modifications, with respect to the issue and execution of a warrant to detain in a youth justice centre or a youth residential centre and with respect to any matter arising out of any such detention.

### Subdivision 4—Warrant to seize property

## 73 Warrant to seize property

S. 73(1)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.35).

- (1) A warrant to seize property may be issued—
- (a) if the accused in a criminal proceeding in the Court fails to comply with an order for the payment of a fine or of any instalment under an instalment order; or
  - (b) as authorised by any other Act.

- (2) A warrant to seize property may be directed to—
- (a) a named member of the police force; or
  - (b) generally all members of the police force; or
  - (ba) the sheriff; or

S. 73(2)(ba)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 7).

- (c) any other person authorised by law to execute a warrant to seize property.

- (3) A warrant to seize property directed to a named member of the police force may be executed by any member of the police force.
- (3AA) A warrant to seize property under subsection (1)(a) or section 98(7)(b) to be directed to the sheriff (other than a warrant referred to in subsection (3A)) may be issued, not in paper form, but by a magistrate or registrar signing a document containing the following particulars in relation to persons against whom a warrant is to be issued under subsection (1)(a) or section 98(7)(b) and causing those particulars to be transferred electronically to the sheriff in accordance with the regulations, if any:
- (a) the name of the person in default;
  - (b) the type of warrant;
  - (c) the amount of the fine or instalment remaining unpaid;
  - (d) the date of issue of the warrant;
  - (e) the name of the magistrate or registrar signing the document;
  - (f) any other particulars that are prescribed.
- (3AB) A warrant issued in accordance with subsection (3AA)—
- (a) directs and authorises the sheriff to do all things that he or she would have been directed and authorised to do if a warrant containing the particulars referred to in subsection (3AA) and directed to the sheriff had been issued in paper form under subsection (1)(a) or section 98(7)(b) by the magistrate or registrar;

**S. 73(3AA)**  
inserted by  
No. 69/1997  
s. 28(2).

**S. 73(3AB)**  
inserted by  
No. 69/1997  
s. 28(2).

(b) must not be amended, altered or varied after its issue, unless the amendment, alteration or variation is authorised by or under this or any other Act.

S. 73(3A)(3B)  
inserted by  
No. 70/1996  
s. 6,  
repealed by  
No. 12/2006  
s. 169(e).

\* \* \* \* \*

S. 73(4)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 8).

(4) Subsections (4) to (7) of section 111 apply to a warrant to seize property directed to the sheriff under this Subdivision in the same manner as they apply to a warrant to seize property directed to the sheriff in a civil proceeding.

#### **74 Authority conferred by warrant to seize property**

A warrant to seize property directs and authorises the person to whom it is directed—

- (a) to seize the personal property of the person named or described in the warrant; and
- (b) if the sums named in the warrant together with all lawful costs of execution are not paid, to sell the personal property seized.

#### **Subdivision 5—Search warrants**

#### **75 Search warrants**

- (1) A search warrant may be issued as authorised by any Act other than this Act.
- (2) An application for a search warrant must be supported by evidence on oath or by affidavit.
- (3) An affidavit supporting an application for a search warrant may be a copy of an affidavit transmitted by facsimile machine.

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## **76 Persons to whom search warrant may be directed**

- (1) A search warrant may be directed to—
  - (a) a named member of the police force; or
  - (b) generally all members of the police force; or
  - (c) any other person authorised by law to execute a search warrant.
- (2) A search warrant directed to a named member of the police force may be executed by any member of the police force.

## **77 Endorsing a warrant for bail**

- (1) The person issuing a search warrant may endorse the warrant with a direction that any person arrested must be released on bail as specified in the endorsement.
- (2) An endorsement under subsection (1) must fix the amounts in which the principal and the sureties, if any, are to be bound and the amount of any money or the value of any security to be deposited.

## **78 Authority conferred by search warrant**

- (1) A search warrant authorises the person to whom it is directed—
  - (a) if the warrant is to search for a person—
    - (i) to break, enter and search any place where the person named or described in the warrant is suspected to be; and
    - (ii) to arrest the person named or described in the warrant; and
  - (b) if the warrant is to search for any thing—
    - (i) to break, enter and search any place or vehicle named or described in the warrant for any article, thing or

**S. 78(1)(b)(i)**  
**amended by**  
**No. 25/2009**  
**s. 18(1).**

material of any kind named or described in the warrant; and

- (ii) to bring the article, thing or material before the Court so that the matter may be dealt with according to law; and
- (iii) to arrest any person apparently having possession, custody or control of the article, thing or material.

(2) The person to whom a search warrant is directed must cause the person named or described in the warrant, or apparently having possession, custody or control of any article, thing or material named or described in the warrant, when arrested—

S. 78(2)(a)  
amended by  
No. 49/1990  
s. 5(e).

- (a) to be brought before a bail justice or the Court within a reasonable time of being arrested to be dealt with according to law; or
- (b) to be released on bail in accordance with the endorsement on the warrant.

(3) A person arrested on a search warrant may be discharged from custody on bail under section 10 of the **Bail Act 1977**.

S. 78(4)  
inserted by  
No. 49/1990  
s. 5(f).

(4) In determining what constitutes a reasonable time for the purposes of subsection (2)(a) the matters specified in section 464A(4) of the **Crimes Act 1958** may be considered.

S. 78(4A)  
inserted by  
No. 70/2010  
s. 28.

(4A) If a person is brought before a bail justice or the Court in accordance with subsection (2)(a), the bail justice or the Court is not bound by the endorsement on the warrant when determining any matter in relation to bail.

S. 78(5)  
inserted by  
No. 71/1993  
s. 5.

(5) For the purposes of subsection (1)(b)(ii) an article, thing or material that is bulky or cumbersome may be brought before the Court by giving evidence on oath to the Court as to the present whereabouts of

the article, thing or material and by producing a photograph of it.

- (6) The Court may direct that any article, thing or material seized under a search warrant be returned to its owner, subject to any condition that the Court thinks fit, if in the opinion of the Court it can be returned consistently with the interests of justice. S. 78(6)  
inserted by  
No. 71/1993  
s. 5.
- (7) In this section—  
*vehicle* includes motor vehicle, aircraft and vessel. S. 78(7)  
inserted by  
No. 25/2009  
s. 18(2).

### Subdivision 6—Remand warrants

#### 79 Remand warrants

- (1) A remand warrant may be issued—
- (a) if an accused who has been charged with an offence has been arrested under a warrant or otherwise and— S. 79(1)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.36(a)).
- (i) is refused bail; or
- (ii) has been granted bail but is unable to meet any bail condition imposed; or
- (b) if a witness is arrested under a warrant and the Court orders that the witness be remanded in custody until the giving of the evidence; or
- (c) if the Court orders an accused to be remanded in custody during the adjournment of any criminal proceeding; or S. 79(1)(c)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.36(a)).
- (d) if an accused has been committed to stand trial and— S. 79(1)(d)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.36(a)).
- (i) is refused bail; or

S. 79(1)(d)(iii)  
amended by  
Nos 46/1998  
s. 7(Sch. 1) (as  
amended by  
No. 12/1999  
s. 3(Sch. 1  
item 19)),  
68/2009  
s. 97(Sch.  
item 82.36(b)).

- (ii) has been granted bail but is unable to meet any bail condition imposed; or
- (iii) is returned to the custody of the Secretary to the Department of Human Services under section 333(1)(c) of the **Criminal Procedure Act 2009**; or

S. 79(2)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.37).

- (e) as authorised by any other Act.
- (2) If an accused is remanded in custody on two or more charges to be heard by the same court at the same time and place, the Court may issue one remand warrant in respect of all the charges.

### **80 Persons to whom remand warrant may be directed**

S. 80(1)(ba)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 9).

- (1) A remand warrant may be directed to—
- (a) a named member of the police force; or
  - (b) generally all members of the police force; or
  - (ba) generally all prison officers; or
  - (c) any other person authorised by law to execute a remand warrant.
- (2) A remand warrant directed to a named member of the police force may be executed by any member of the police force.
- (3) A remand warrant directed to a named member of the police force or to generally all members of the police force may be executed by any prison officer.

S. 80(3)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 10).

## 81 Directions in, and authority of, remand warrant

A remand warrant—

- (a) directs and authorises the person to whom it is directed to take and safely convey the person named in the warrant—
- (i) to a prison; or
  - (ii) to a police gaol; or
  - (iii) if the Court has given a direction under section 333(1)(c) of the **Criminal Procedure Act 2009**, to a youth justice centre—
- and there to deliver the person to the officer in charge of the prison or police gaol or into the custody of the Secretary to the Department of Human Services (as the case requires); and
- (b) directs and authorises the Secretary to the Department of Justice or the Chief Commissioner of Police or the Secretary to the Department of Human Services (as the case requires) or any other person into whose custody the person named in the warrant is transferred to receive that person into custody and safely keep that person—
- (i) for the period specified, or in the circumstances described, in the warrant; or

S. 81(a) amended by Nos 33/1994 s. 10(1)(a)(ii), 46/1998 s. 7(Sch. 1).

S. 81(a)(ii) amended by No. 33/1994 s. 10(1)(a)(i).

S. 81(a)(iii) inserted by No. 33/1994 s. 10(1)(a)(i), amended by Nos 48/2006 s. 42(Sch. item 22.7), 68/2009 s. 97(Sch. item 82.38).

S. 81(b) amended by Nos 33/1994 s. 10(1)(b), 45/1996 s. 18(Sch. 2 item 9.2), 46/1998 s. 7(Sch. 1).

- (ii) until that person is otherwise removed or discharged from custody by due course by law.

## 82 Remand of more than 8 clear days

S. 82(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.39).

- (1) The Court must not remand an accused in custody for a period of more than 8 clear days unless both the accused and the informant consent.

S. 82(2)  
amended by  
Nos 33/1994  
s. 10(2),  
45/1996  
s. 18(Sch. 2  
item 9.3),  
4/1997 s. 8(1),  
46/1998  
s. 7(Sch. 1),  
68/2009  
s. 97(Sch.  
item 82.40),  
69/2009  
s. 54(Sch. Pt 2  
item 32).

- (2) If an accused<sup>10</sup>—
- (a) has been granted bail; and
  - (b) has consented to an adjournment of the proceeding for a period of more than 8 clear days; and
  - (c) has not yet been released on bail—
- the remand warrant must direct the Secretary to the Department of Justice or the Chief Commissioner of Police or the Secretary to the Department of Human Services (as the case requires) or any other person into whose custody the accused is transferred to bring the accused at the end of 8 clear days (unless in the meantime he or she is released on bail) before the venue of the Court prescribed for the purposes of this section or, if the accused consents to appear before the Court by audio visual link within the meaning of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**, to another place specified in the warrant where facilities exist to enable the accused to so appear.

\* \* \* \* \*

Pt 4 Div. 3  
Subdiv. 7  
(Heading and  
ss 82A–82F)  
inserted by  
No. 33/1994  
s. 11(1),  
amended by  
Nos 45/1996  
s. 18(Sch. 2  
item 9.4),  
70/1996 s. 7,  
84/1997 s. 52,  
99/2000 s. 3,  
3/2005 s. 26,  
repealed by  
No. 12/2006  
s. 176(1).

**Subdivision 8—Special powers of the sheriff in executing warrants**

Pt 4 Div. 3  
Subdiv. 8  
(Heading and  
ss 82G–82I)  
inserted by  
No. 99/2000  
s. 4.

\* \* \* \* \*

S. 82G  
inserted by  
No. 99/2000  
s. 4,  
repealed by  
No. 9/2009  
s. 73.

\* \* \* \* \*

S. 82H  
inserted by  
No. 99/2000  
s. 4,  
repealed by  
No. 9/2009  
s. 74.

**82I Power to assist police at road checks**

S. 82I  
inserted by  
No. 99/2000  
s. 4.

- (1) This section applies if a member of the police force exercising a power conferred (whether directly or by implication) by the **Road Safety Act 1986** requests or signals the driver of a motor vehicle to stop the vehicle.

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 4—Warrants and Criminal Proceedings

**s. 82I**

**S. 82I(2)**  
amended by  
**No. 9/2009**  
s. 75(1).

- (2) Once the vehicle has stopped, the member of the police force or any person who is a bailiff for the purposes of the **Supreme Court Act 1986** (other than a bailiff who is a sheriff's officer) may direct the driver of the vehicle—
- (a) to keep the vehicle stationary;
  - (b) to drive the vehicle to a designated spot;
  - (c) to produce his or her driver licence document or permit document;
  - (d) to comply with any other reasonable direction—

to enable a determination of whether the driver, or any person accompanying the driver, is named in any warrant.

**Note to**  
**s. 82I(2)**  
inserted by  
**No. 9/2009**  
s. 75(2).

**Note**

See section 30 of the **Sheriff Act 2009** for the power of the sheriff, and by delegation, sheriff's officers, at police road checks.

- (3) A person who is given a direction under subsection (2) must comply with the direction unless he or she has a reasonable excuse for not doing so.

Penalty: 5 penalty units.

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 4—Warrants and Criminal Proceedings

s. 97

\* \* \* \* \*

Pt 4 Div. 4  
(Headings  
and ss 83–92)  
amended by  
Nos 49/1991  
s. 119(7)(Sch.  
4 items 13.3,  
13.4), 33/1994  
s. 12, 109/1994  
s. 33, 64/1996  
s. 34, 70/1996  
s. 14(a),  
48/1997  
s. 66(1)(2),  
69/1997 s. 29,  
10/1999  
ss 9–12,  
48/2006  
s. 42(Sch.  
item 22.7),  
repealed by  
No. 7/2009  
s. 427(1)(d) (as  
amended by  
No. 68/2009  
s. 54(m)).

\* \* \* \* \*

Pt 4 Div. 5  
(Heading and  
ss 93-96)  
amended by  
No. 33/1994  
s. 13, 50/2006  
s. 21(3),  
repealed by  
No. 7/2009  
s. 427(1)(d) (as  
amended by  
No. 68/2009  
s. 54(m)).

**Division 6—Enforcement**

**Subdivision 1—Ordinary enforcement provisions**

**97 Imprisonment in default of payment of fine**

- (1) If the Court makes an order in a proceeding imposing a fine and the person fined is not present when the order is made—
- (a) the principal registrar must cause to be sent by post to the person fined, at the address appearing on the charge-sheet or any later

address notified to the Court by that person,  
a notice advising of the order imposing the  
fine; and

(b) the fine is payable—

(i) within 21 days after the posting to that  
person of a notice under paragraph (a);  
or

(ii) within such longer period as is ordered  
by the Court under section 54 of the  
**Sentencing Act 1991**.

S. 97(1)(b)(ii)  
amended by  
No. 49/1991  
s. 119(7)  
(Sch. 4  
item 13.5).

S. 97(2)  
repealed by  
No. 49/1991  
s. 119(7)  
(Sch. 4  
item 13.6).

\* \* \* \* \*

(3) If in any proceeding the Court orders a  
corporation to pay a fine then, despite anything in  
this or any other Act, that order may be enforced  
by a warrant to seize property.

## 98 Enforcement of fines against corporations

(1) In this section—

*director*, in relation to a body corporate, includes  
any person occupying the position of director  
of the body corporate (by whatever name  
called) and includes a person in accordance  
with whose directions or instructions the  
directors of the body corporate are  
accustomed to act;

*reciprocating court* means a court of a  
reciprocating State or Territory declared by  
proclamation under this section to be a  
reciprocating court;

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***reciprocating State or Territory*** means another State or a Territory of the Commonwealth that is declared by proclamation under this section to be a reciprocating State or Territory.

- (2) The Governor in Council may, subject to subsection (3), declare another State or a Territory of the Commonwealth to be a reciprocating State or Territory for the purposes of the enforcement against a body corporate in Victoria of a fine payable under an order of a court having summary jurisdiction in the other State or in the Territory.
- (3) A State or Territory the subject of a proclamation under subsection (2) must have laws providing for enforcement against a body corporate in that State or Territory of a fine payable under an order of the Magistrates' Court or other court having summary jurisdiction in Victoria.
- (4) The Governor in Council may by proclamation declare a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court for the purposes of the enforcement against a body corporate in Victoria of a fine payable under a conviction or order of that court.
- (5) For the purposes of subsection (4) a court may be declared singly or in conjunction with another or others by such description or class or by means of any reference that the Governor in Council thinks fit.
- (6) If, under an order of a reciprocating court made in the exercise of its summary jurisdiction—
  - (a) a fine is payable by a body corporate having or appearing to have property in Victoria;  
and

(b) a registrar of the Magistrates' Court at a venue at or near to a place where the body corporate has or appears to have property, receives a request in writing from a registrar or other corresponding officer of the reciprocating court for the enforcement of the order accompanied by—

- (i) a certified copy of the order; and
- (ii) a certificate signed by the registrar or corresponding officer making the request certifying the amount of the fine outstanding under the order—

the registrar must register the order in the Magistrates' Court by filing in the Court a certified copy of the order and must note the date of registration on the copy.

(7) On the registration of an order under subsection (6)—

- (a) the order is deemed to be an order of the Magistrates' Court requiring payment by the body corporate of the amount of the fine referred to in the certificate under subsection (6) as outstanding; and
- (b) the registrar may issue a warrant to seize property of the body corporate for the purpose of recovering the amount of the fine; and
- (c) the warrant issued under paragraph (b) is deemed to be a warrant to seize property issued under this Act and the provisions of this Act, with any necessary modifications, apply and extend to the enforcement of that warrant.

- 
- (8) If the registrar receives, after the request for the enforcement of the order, a notification from the registrar or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of the whole or part of the outstanding fine, the registrar must—
- (a) note the particulars of the payment on the certified copy of the order filed in the Court; and
  - (b) arrange for the return of the warrant issued under subsection (7)(b), if it is unexecuted; and
  - (c) if the fine—
    - (i) has been paid in full, withdraw the warrant; or
    - (ii) has not been paid in full, amend the warrant to show the amount still outstanding, and the warrant may be enforced in respect of the altered amount.
- (9) The registrar of the Magistrates' Court must remit to the registrar or other corresponding officer of the reciprocating court which made the order any sum of money received in satisfaction of the whole or part of a fine payable under an order enforced under subsection (7).
- (10) Any sum of money paid to or received by a registrar of the Magistrates' Court from a reciprocating court in satisfaction of the whole or part of a fine payable under an order of the Magistrates' Court enforced by the reciprocating court must be paid to or received by and applied by the registrar as if the sum had been paid to the registrar by the body corporate by which the fine was payable.

Pt 4 Div. 6  
Subdiv. 2  
(Heading)  
amended by  
No. 12/2006  
s. 170.

**Subdivision 2—Procedure for enforcement of infringement penalties under the Infringements Act 2006**

S. 99  
amended by  
No. 70/1996  
s. 8,  
substituted by  
No. 12/2006  
s. 171 (as  
amended by  
No. 32/2006  
s. 53(1)).

**99 Infringement offence enforcement procedure under the Infringements Act 2006**

The procedure set out in the **Infringements Act 2006** may be used instead of commencing a proceeding against a person for an offence—

- (a) for which an infringement notice within the meaning of that Act could be issued or served in respect of an offence under an Act or other instrument which establishes the offence; and
- (b) which is a lodgeable infringement offence within the meaning of the **Infringements Act 2006**.

S. 99A  
inserted by  
No. 99/2000  
s. 5.

**99A Certain agencies may give information for enforcement purposes**

- (1) In this section, *specified agency* means a person or body—
  - (a) that holds information that may be of use in the enforcement of court orders and fines; and
  - (b) that is stated by regulations made for the purposes of this section to be a specified agency—

but does not include a person or body listed in section 90A(1) of the **Melbourne City Link Act 1995**.

S. 99A(2)  
amended by  
No. 12/2006  
s. 172(a).

- (2) Words and expressions used in this section have the same meanings as in section 124A.

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- (3) The infringements registrar, the sheriff and any contractor or sub-contractor supporting the functions of the Infringements Court or the sheriff may, for the purpose of the enforcement of court orders and fines, request information that may assist in carrying out that purpose from any person or body.
- (4) On the written request of the infringements registrar, the sheriff or any contractor or sub-contractor supporting the functions of the Infringements Court or the sheriff, a specified agency may give the person or body making the request access to any information held by the agency that may be of use in the enforcement of court orders and fines.
- (5) A person who obtains access to any information as a result of a request made under this section—
- (a) may use the information to enforce court orders and fines; but
  - (b) is otherwise subject to all the requirements and restrictions concerning the use and disclosure of the information that apply to the person who provided, or granted access to, the information in response to the request.

**S. 99A(3)**  
amended by  
**No. 12/2006**  
s. 172(b).

**S. 99A(4)**  
amended by  
**No. 12/2006**  
s. 172(c).

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**PART 5—CIVIL PROCEEDINGS**

**Division 1—Jurisdiction**

**100 Extent of jurisdiction<sup>11</sup>**

- (1) The Court has jurisdiction, subject to subsection (2)—
  - (a) to hear and determine any cause of action for damages or a debt or a liquidated demand if the amount claimed is within the jurisdictional limit; and
  - (b) to hear and determine any claim for equitable relief if the value of the relief sought is within the jurisdictional limit; and
  - (c) to hear and determine, with the consent in writing of the parties—
    - (i) any cause of action for damages or a debt or a liquidated demand, irrespective of the amount claimed; and
    - (ii) any claim for equitable relief, irrespective of the value of the relief sought; and
  - (d) to hear and determine any other cause of action if the Court is given jurisdiction to do so by or under any Act other than this Act.
- (2) The Court does not have jurisdiction in any cause of action—
  - (a) in which the effect of, or the validity or invalidity of, any act, matter or thing done or omitted to be done by any person or body whatsoever in the exercise or purported exercise of any power or duty conferred or imposed on that person or body or purportedly conferred or imposed on that person or body by or under—

- (i) any royal prerogative; or
  - (ii) any statute—  
is sought to be determined or declared; or
  - (b) in the nature of a proceeding for a prerogative writ; or
  - (c) brought on a judgment of the Supreme Court or the County Court.
- (2A) The jurisdictional limit does not apply to any question or matter arising out of Part IV of the **Accident Compensation Act 1985** for which the Court has jurisdiction to determine.
- (3) For the purpose of determining in a proceeding involving property whether the amount claimed or the value of the relief sought is within the jurisdictional limit, a certificate which purports to have been issued by a valuer and which purports to state the value of the property as at a particular date is admissible in evidence and, in the absence of evidence to the contrary, is proof of the value of the property as at that date.
- (4) The Court does not cease to have jurisdiction in respect of a cause of action because—
- (a) part of the cause of action arose outside Victoria—if a material part of it arose in Victoria; or
  - (b) the whole cause of action arose outside Victoria—if the defendant resided within Victoria at the time of being served with the complaint.
- (5) A minor may bring a proceeding in the Court for the recovery of money payable to the minor under a contract of service or a contract for services as if the minor were of full age.

S. 100(2A)  
inserted by  
No. 9/2010  
s. 93.

S. 100(3)  
amended by  
No. 91/1994  
s. 36(7)(b).

s. 101

S. 100(6)(b)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 53.3).

- (6) A party to a civil proceeding (including an arbitration) may appear—
- (a) personally; or
  - (b) by a legal practitioner or other person empowered by law to appear for the party; or
  - (c) in the case of a cause of action for a debt or a liquidated demand, by a person in the exclusive employment of the party who is authorised in writing to appear for the party.
- (7) Every judgment debt carries interest at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** from the time the order was made.
- (8) Payment of the interest may be enforced by a warrant to seize property.
- (9) The amount of the interest must be stated in the body of the warrant.

S. 100(8)  
substituted by  
No. 34/1990  
s. 4(Sch. 3  
item 11).

S. 100(9)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 11).

### 101 Proceedings beyond jurisdiction

- (1) If a civil proceeding is wholly or partly beyond the jurisdiction of the Court, the Court may—
- (a) amend the complaint for the purpose of bringing the proceeding within jurisdiction; or
  - (b) order that the proceeding be stayed pending the making of an application under Part 3 of the **Courts (Case Transfer) Act 1991**; or
  - (c) order that the complaint be struck out and award costs as if the Court had jurisdiction and the complaint were dismissed.

S. 101(1)(b)  
amended by  
No. 43/1991  
s. 38(a).

(2) If—

- (a) under subsection (1)(b) the Court orders that a proceeding be stayed pending the making of an application under Part 3 of the **Courts (Case Transfer) Act 1991**; and
- (b) within a reasonable time after the making of that order the proceeding has not been transferred to another court—

the Court may exercise the power conferred by subsection (1)(c).

S. 101(2)(a)  
amended by  
No. 43/1991  
s. 38(b).

**Division 1A—Administration of children's funds**

Pt 5 Div. 1A  
(Heading and  
s. 101A)  
inserted by  
No. 15/1998  
s. 9.

**101A Court orders relating to administration of children's funds**

S. 101A  
inserted by  
No. 15/1998  
s. 9.

- (1) If in any civil proceedings before the Court it is adjudged or ordered that money be paid to a child (whether or not that child is a party to a cause or matter) the money—
  - (a) is to be paid into court; and
  - (b) unless the Court otherwise orders, is to be paid out to an administrator specified by the Court.
- (2) If any money, not being money to which subsection (3) applies—
  - (a) is paid into court—
    - (i) before the commencement of this section; or
    - (ii) after the commencement of this section in accordance with a judgment or order entered or made before the commencement of this section; and

s. 101A

(b) the money is being held in court on behalf of a child—

the Court may by order direct that the money be paid out to an administrator specified in the order.

- (3) If the Court adjudges or orders that property (whether real or personal) be delivered up or transferred to a child (whether or not that child is a party to a cause or matter), the Court—
- (a) may order that the property be delivered up or transferred to an administrator specified in the order; and
- (b) may give any directions for the service of the order on the administrator as it thinks fit.
- (4) If an order under subsection (3) is served on State Trustees within the meaning of the **State Trustees (State Owned Company) Act 1994**, State Trustees must accept delivery or transfer of the property to which the order relates and the acceptance of the property is a sufficient discharge to the person delivering or transferring the property.
- (5) A copy of any order made under this section must be given by the administrator to the Tribunal within the meaning of the **Guardianship and Administration Act 1986** and the Public Advocate appointed under that Act.
- (6) An order of the Court under this section that money be paid out to an administrator has effect as if it were an administration order under the **Guardianship and Administration Act 1986** and, subject to the order of the Court, the administrator has all the powers and duties of an administrator referred to in Divisions 3 and 3A of Part 5 of that Act.

S. 101A(5)  
amended by  
No. 30/2004  
s. 14(1)(2).

S. 101A(6)  
amended by  
No. 30/2004  
s. 14(1).

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**Division 1B—Transfer and payment of money to the  
Supreme Court for person under disability**

Pt 5 Div. 1B  
(Heading and  
s. 101B)  
inserted by  
No. 30/2004  
s. 6.

**101B Money held in court for person under disability**

S. 101B  
inserted by  
No. 30/2004  
s. 6.

- (1) In this section, *person under disability* means—
- (a) a minor; or
  - (b) a person who is incapable by reason of injury, disease, senility, illness or physical or mental infirmity of managing his or her affairs in relation to the proceeding.
- (2) Unless the Court orders otherwise, money held in Court on behalf of a person under disability immediately before the commencement of section 6 of the **Courts Legislation (Funds in Court) Act 2004** must be paid into the Supreme Court by payment to the Senior Master of the Supreme Court to be held in that Court on behalf of the person under disability.
- (3) Unless the Court orders otherwise, in any proceeding in the Court in which it is adjudged or ordered that money be paid for a person under disability, that money must be paid into the Supreme Court (in full compliance with the judgment or order of the Court) by payment to the Senior Master of the Supreme Court to be held in that Court on behalf of the person under disability.
- (4) Money paid to the Senior Master under subsection (2) or (3) is to be held by the Senior Master as if an order had been made in a proceeding in the Supreme Court that the money be paid into court to be held on behalf of the person under disability and as if that money had been paid into court in accordance with that order.

- (5) The Senior Master has the same powers with respect to loss occasioned by delay as the Senior Master would have if an order referred to in subsection (4) had been made.

**Note**

Rule 79.06 of the **Supreme Court (General Civil Procedure) Rules 1996** provides the Senior Master with powers with respect to loss occasioned by delay.

- (6) Nothing in this section affects the operation of section 101A of this Act or section 66 of the **Guardianship and Administration Act 1986**.

**Division 2—Arbitration**

**102 Arbitration for small claims**

S. 102(1)  
amended by  
No. 68/2004  
s. 4.

- (1) The Court must refer a complaint under which the amount of monetary relief sought is less than \$10 000 to arbitration in accordance with this Division.
- (2) Subsection (1) does not apply if—
- (a) the complaint is of a class prescribed by the regulations as a complaint to which this Division does not apply; or
  - (b) the Court, in accordance with subsection (3), orders that the complaint be heard and determined by the Court and not referred to arbitration.
- (3) The Court may, on the application of a party or without any such application, order that a complaint be heard and determined by the Court and not referred to arbitration in accordance with this Division if it is satisfied that—

- 
- (a) the complaint is not disputed; or
  - (b) the complaint relates to the enforcement of an order which has not been set aside; or
  - (c) the complaint involves complex questions of law or fact; or
  - (d) a question of fraud is in issue; or
  - (e) the parties agree that the complaint should not be referred to arbitration; or
  - (f) it would be unreasonable for the complaint to be referred to arbitration having regard to its subject-matter, the circumstances of the parties or the interests of any other person likely to be affected by an award under this Division.
- (4) If arbitration of a complaint is commenced and the Court is satisfied, on the application of a party or without any such application, that the complaint ought to be determined by the Court and not referred to arbitration in accordance with this Division, the Court may, at any time before an award is made in the arbitration—
- (a) order that the complaint be determined by the Court; and
  - (b) make such order as to the costs of the arbitration as it thinks fit; and
  - (c) give such directions as it thinks necessary about the hearing of the complaint by the Court.

### **103 Conduct of arbitration**

- (1) An arbitration under this Division is to be conducted by the Court constituted by a magistrate or, if the Rules so provide, by a registrar.

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- (2) In conducting an arbitration, the Court—
- (a) is not bound by rules of evidence but may inform itself on any matter in such manner as it thinks fit; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not required to conduct any proceedings in a formal manner; and
  - (d) may exercise any powers that the Court may exercise in hearing and determining a complaint.

S. 103(2A)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.9).

- (2A) Nothing in subsection (2)(a) prevents the application of Part 3.10 of the **Evidence Act 2008** to the conduct of an arbitration.

- (3) Evidence in an arbitration—
- (a) may be given orally or in writing; and
  - (b) if the Court so requires, must be given on oath or by affidavit.
- (4) The Court must determine according to law any question that arises for determination in an arbitration.
- (5) If the Court is satisfied that a party to an arbitration does not have a knowledge of the English language that is sufficient to enable the party to understand, or participate in, the arbitration, the Court may allow a competent interpreter to interpret the arbitration.

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#### **104 Award**

- (1) An award of the Court in an arbitration under this Division must be in writing.
- (2) If the Court includes in an award a statement of the reasons for making the award, only the terms of the award and not the reasons must be in writing.
- (3) An award of the Court in an arbitration under this Division has effect as if it were an order made by the Court in a proceeding heard and determined by it.
- (4) If the Court does not include in an award a statement of the reasons for making the award, the Court must, if requested to do so orally or in writing by a party to the arbitration within 28 days after the making of the award, furnish to that party within a reasonable time after receiving the request a statement in writing of the reasons for making the award.

#### **105 Costs**

- (1) If an arbitration relates to a complaint under which monetary relief is sought and the Court awards a party less than \$500, the Court must not award costs unless satisfied that special circumstances make it appropriate to do so.
- (2) Subject to subsection (1), the Court may, in accordance with the regulations or, if there are no relevant regulations, then in accordance with the Rules, award costs to a party in respect of an arbitration under this Division.

s. 106

S. 106  
amended by  
No. 50/2011  
s. 46(Sch.  
item 12).

## 106 Commercial Arbitration Act not to apply

The **Commercial Arbitration Act 2011** does not apply to an arbitration under this Division.

S. 106A  
inserted by  
No. 47/2010  
s. 90.

## 106A Interaction with Civil Procedure Act 2010

The powers of the Court under this Division are in addition to, and do not derogate from, the powers of a court under Chapter 5 of the **Civil Procedure Act 2010**.

### Division 3—Pre-hearing conferences

## 107 Pre-hearing conferences

S. 107(1)  
substituted by  
No. 51/2000  
s. 6(1).

- (1) A magistrate or a registrar may refer a civil proceeding or part of a civil proceeding for a pre-hearing conference in accordance with the Rules.
- (2) A magistrate or registrar must conduct the pre-hearing conference in accordance with the Rules and may—

S. 107(2)(a)  
amended by  
No. 51/2000  
s. 6(2)(a).

- (a) if the proceeding or any part of the proceeding is not settled between the parties, refer it back to the Court; or

S. 107(2)(b)  
amended by  
No. 51/2000  
s. 6(2)(b).

- (b) at the request of the parties, refer the proceeding or any part of the proceeding back to the Court for arbitration under Division 2; or

S. 107(2)(c)  
amended by  
No. 51/2000  
s. 6(2)(c).

- (c) if the proceeding or any part of the proceeding is settled between the parties, refer it back to the Court for the making of an order.

S. 107A  
inserted by  
No. 47/2010  
s. 91.

## 107A Interaction with Civil Procedure Act 2010

The powers of the Court under this Division are in addition to, and do not derogate from, the powers of a court under the **Civil Procedure Act 2010**.

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**Division 3A—Mediation**<sup>12</sup>

Pt 5 Div. 3A  
(Heading and  
ss 108, 108A)  
inserted by  
No. 64/1996  
s. 35.

**108 Power to refer proceedings to mediation**

New s. 108  
inserted by  
No. 64/1996  
s. 35.

- (1) Subject to and in accordance with the Rules or the **Civil Procedure Act 2010**, the Court may, with or without the consent of the parties, refer the whole or any part of a civil proceeding to mediation.
- (2) Unless all the parties who attend the mediation otherwise agree in writing, no evidence shall be admitted at the hearing of the proceeding of anything said or done by any person at the mediation.
- (3) Subsection (2) does not apply to mediation by judicial resolution conference.

S. 108(1)  
amended by  
Nos 3/2005  
s. 16, 47/2010  
s. 92(1).

S. 108(3)  
inserted by  
No. 50/2009  
s. 13.

**Note**

See section 108B.

**108A Protection of mediators**

A mediator to whom a civil proceeding or any part of a civil proceeding has been referred (whether by or under this Act, the Rules or under the **Civil Procedure Act 2010**) has, in the performance of his or her duties in connection with the reference, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

S. 108A  
inserted by  
No. 64/1996  
s. 35,  
amended by  
No. 47/2010  
s. 92(2).

s. 109

Pt 5 Div. 3B  
(Heading and  
ss 108B,  
108C)  
inserted by  
No. 50/2009  
s. 15,  
amended by  
No. 34/2010  
s. 49(2)(3),  
repealed by  
No. 47/2010  
s. 92(3).

\* \* \* \* \*

Pt 5 Div. 4  
(Heading)  
amended by  
No. 43/1991  
s. 38(c).

#### Division 4—Appeals and re-hearings

S. 108  
repealed by  
No. 43/1991  
s. 38(d).

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### 109 Appeal to Supreme Court from final order made in civil proceeding

- (1) A party to a civil proceeding in the Court may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.
- (2) An appeal under subsection (1)—
  - (a) must be instituted not later than 30 days after the day on which the order complained of was made; and
  - (b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.
- (3) Subject to subsection (2), an appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.

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- (4) An appeal instituted after the end of the period referred to in subsection (2)(a) is deemed to be an application for leave to appeal under subsection (1).
  - (5) The Supreme Court may grant leave under subsection (4) and the appellant may proceed with the appeal if the Supreme Court—
    - (a) is of the opinion that the failure to institute the appeal within the period referred to in subsection (2)(a) was due to exceptional circumstances; and
    - (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.
  - (6) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.
  - (7) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.

### **110 Re-hearing**

- (1) If a final order is made by the Court in a civil proceeding against a person who did not appear in the proceeding, that person may, subject to and in accordance with the Rules, apply to the Court for an order that the order be set aside and that the proceeding be re-heard.
- (2) On an application under this section, the Court may set aside the order subject to any terms and conditions that it thinks just and re-hear the proceeding.

- (3) Subject to subsection (4), an application under this section does not operate as a stay of the order unless the Court so orders.
- (4) An application under this section with respect to an order for the payment of money operates as a stay of so much of the order as relates to the payment of money.
- (5) If an applicant under this section fails to appear at the time fixed for the hearing of the application and the application is struck out, the applicant can re-apply only if the applicant first obtains the leave of the Court.

#### **Division 5—Enforcement**

#### **111 Enforcement of orders**

- (1) An order made by the Court in a civil proceeding for the payment of money may, subject to and in accordance with the Rules, be enforced by one or more of the following means:
  - (a) A warrant to seize property;
  - (b) An attachment of earnings order;
  - (c) An attachment of debts order.
- (2) A warrant to seize property may be directed to—
  - (a) the sheriff; or
  - (b) a named member of the police force; or
  - (c) generally all members of the police force.
- (3) A warrant to seize property directs and authorises the person to whom it is directed—
  - (a) to seize the personal property of the person named or described in the warrant; and
  - (b) if the sums named in the warrant together with all lawful costs of execution are not paid, to sell the personal property seized.

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- (4) A warrant to seize property directed to the sheriff may, if the sheriff so directs, be executed by—
- (a) a named person who is a bailiff for the purposes of the **Supreme Court Act 1986**; or
  - (b) generally all persons who are bailiffs for the purposes of the **Supreme Court Act 1986**; or
  - (c) a named member of the police force; or
  - (d) generally all members of the police force.
- (5) A direction may be given by the sheriff under subsection (4) by—
- (a) endorsing the execution copy of the warrant with the direction; or
  - (b) issuing a warrant to the same effect as the warrant to seize property but directed in accordance with subsection (4).
- (6) A warrant endorsed or issued by the sheriff in accordance with subsection (5) directs and authorises the person to whom it is directed to do all things that he or she would have been directed and authorised to do by the original warrant if it had been directed to him or her.
- (7) A warrant to seize property directed to a named bailiff or member of the police force may be executed by any bailiff or member of the police force, as the case requires.
- (7A) The person executing a warrant to seize property may serve on—
- (a) the person against whom the warrant is issued and whose personal property is seized under the warrant; or

S. 111(7A)  
inserted by  
No. 33/1994  
s. 15.

- (b) a person who is in possession of any personal property of the person against whom the warrant is issued that is seized under the warrant—

a notice in the form prescribed by the Rules informing the person served with the notice that he or she is responsible for the safe-keeping of the personal property seized under the warrant that is described in the notice and also informing him or her of the provisions of subsection (7B).

S. 111(7B)  
inserted by  
No. 33/1994  
s. 15.

- (7B) A person who knows that the property has been seized under a warrant to seize property or is the subject of a notice served under subsection (7A) must not, except with the written consent of the person executing the warrant to seize property—
- (a) interfere with or dispose of that property; or
  - (b) deface or remove any mark attached to that property indicating that it had been so seized; or
  - (c) remove that property from the place at which it was situated when the notice was served.

Penalty applying to this subsection: 25 penalty units or 6 months imprisonment or both.

S. 111(7C)  
inserted by  
No. 33/1994  
s. 15.

- (7C) Nothing in subsection (7B) affects the powers of the Court or of the Supreme Court in relation to contempt.
- (8) The following orders may, subject to and in accordance with the Rules, be enforced by a warrant of delivery:
- (a) An order for the delivery of goods;
  - (b) An order for the delivery of goods or the payment of their assessed value.

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- (9) An order for the payment of the assessed value of goods may be enforced by the same means as any other order for the payment of money.
- (9A) A person to whom an attachment of earnings order is directed must not fail to comply with the order.
- Penalty: 60 penalty units or 6 months imprisonment or both.
- (9B) It is a defence to a charge under subsection (9A) for the person charged to prove that he, she or it took all reasonable steps to comply with the order.
- (9C) Nothing in subsection (9A) affects the powers of the Court or of the Supreme Court in relation to contempt of court.
- (10) A person must not dismiss an employee or injure an employee in the employee's employment or alter an employee's position to the prejudice of the employee because an attachment of earnings order has been made in relation to the employee or the employee is required to make payments under an attachment of earnings order.
- Penalty: 5 penalty units.
- (11) The Court may order a person convicted of an offence under subsection (10) to reimburse the employee any lost wages and to cause the employee to be reinstated in the employee's former position or in a similar position.
- (12) An amount ordered to be reimbursed under subsection (11) may be recovered from the convicted person in the same manner as the penalty to which that person is liable under subsection (10) and may be included in the same warrant.

S. 111(9A)  
inserted by  
No. 33/1994  
s. 14.

S. 111(9B)  
inserted by  
No. 33/1994  
s. 14.

S. 111(9C)  
inserted by  
No. 33/1994  
s. 14.

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- (13) An attachment of earnings order may apply to earnings falling to be paid—
- (a) by the Crown; or
  - (b) by a statutory authority representing the Crown; or
  - (c) out of the Consolidated Fund.
- (14) Nothing in this section takes away from the power of the Court to make, or from the right of a person to apply for, an instalment order under the **Judgment Debt Recovery Act 1984**.

## 112 Certificate for Supreme Court

- (1) If—
- (a) an order is made by the Court in a civil proceeding for the payment of money; and
  - (b) a warrant to seize property has been returned unsatisfied in whole or in part—
- a registrar must, on the application of the person entitled to enforce the order, give that person a certificate of the order and of the amount remaining unpaid under the order and record the fact of the giving of the certificate in the register of the Court.
- (2) A person who is given a certificate under subsection (1) may file the certificate in the Supreme Court and, on the filing of the certificate, judgment is deemed to have been entered in the Supreme Court for the sum mentioned in the certificate as being unpaid together with all fees paid for obtaining and filing the certificate and the prescribed amount for costs.
- (3) After the issue of a certificate under subsection (1) no further proceedings (other than proceedings under the **Judgment Debt Recovery Act 1984**) must be taken in the Magistrates' Court but, on the

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filing of the certificate in the Supreme Court, the judgment deemed to have been entered may be enforced by the same means as any other judgment entered in the Supreme Court, including enforcement under the **Foreign Judgments Act 1962**.

**113 Application of Imprisonment of Fraudulent Debtors Act**

Part III of the **Imprisonment of Fraudulent Debtors Act 1958** extends and applies with respect to orders for the payment of money made by the Court in a civil proceeding.

**114 Enforcement by executors and administrators**

If an order is made by the Court in a civil proceeding and the person entitled to enforce the order dies, the executor or administrator of that person may enforce the order to the same extent and by the like means and in the same circumstances as that person might have done if still living.

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**PART 6—JUSTICES**

**Division 1—Justices of the peace**

**115 Office of justice of the peace**

- (1) There continues to be an office of justice of the peace.
- (2) The Governor in Council may appoint as many justices of the peace as are necessary to perform the functions of justices of the peace in the State.

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S. 115(3)  
repealed by  
No. 33/1994  
s. 16(a).<sup>13</sup>

- (4) Every person who is appointed as a justice of the peace must, before acting as a justice of the peace, take an oath of office in the prescribed form and manner.
- (5) The office of justice of the peace is held by the following persons—
  - (a) every person who before the commencement of this section was appointed as a justice of the peace and who at that commencement—
    - (i) held the office of justice of the peace; and
    - (ii) had not attained the age of 72 years; and
    - (iii) was not bankrupt or had his or her property subject to control under the law relating to bankruptcy;
  - (b) every person who immediately before the commencement of this section held the office of justice of the peace by virtue of holding, or having held, another office;

- (c) every person who is appointed as a justice of the peace under subsection (2).
- (6) A justice of the peace is entitled to use the title "Justice of the Peace" or "JP".
- (7) A person referred to in subsection (5)(a) or (c) ceases to hold the office of justice of the peace if he or she—

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**S. 115(7)(a)**  
**repealed by**  
**No. 33/1994**  
**s. 16(b).<sup>14</sup>**

- (b) has his or her appointment revoked by the Governor in Council under section 116; or
- (c) becomes bankrupt or his or her property becomes subject to control under the law relating to bankruptcy.
- (8) A person referred to in subsection (5)(b) ceases to hold the office of justice of the peace if—
- (a) subject to subsection (9), he or she ceases to hold the office by virtue of holding which he or she holds the office of justice of the peace; or
- (b) in the case of a person who holds the office of justice of the peace by virtue of having held the office of chairman of a municipality, more than 12 months have passed since he or she ceased to hold that office of chairman.
- (9) A person who immediately before the commencement of this section held the office of justice of the peace by virtue of holding the office of chairman of a municipality continues to hold the office of justice of the peace for the period of 12 months immediately after he or she ceases to hold the office of chairman of the municipality.

**s. 116**

S. 115(11)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (10) A person who holds the office of justice of the peace may resign from office by delivering to the Governor in Council a signed letter of resignation.
- (11) A justice of the peace who changes his or her address must within one month after the change notify the Secretary in writing of the change.

**116 Governor in Council may revoke appointment of justices or prohibit certain justices from acting**

The Governor in Council may by Order published in the Government Gazette—

- (a) revoke the appointment of any person as a justice of the peace; or
- (b) prohibit any person who is a justice of the peace by virtue of holding, or having held, another office from acting as a justice of the peace—

and from the day on which the Order is published the person shall cease to be a justice of the peace or shall be incapable of acting as a justice of the peace, as the case requires.

**117 Authority of justices of the peace**

- (1) A justice of the peace may exercise any power conferred on a justice of the peace by or under any Act.
- (2) A magistrate may exercise any power conferred on a justice of the peace by or under any Act.
- (3) Any power conferred on a justice of the peace at common law is only exercisable by a magistrate.

S. 118  
amended by  
No. 7/2009  
s. 435(1) (as  
amended by  
No. 68/2009  
s. 54(u)).

**118 Offence to pretend to be a justice of the peace**

Any person who is not a justice of the peace or who is aware that he or she has been prohibited from acting as a justice of the peace is guilty of an offence and liable to imprisonment for a term of not more than two years if he or she—

- (a) pretends to be, or to be capable of acting as, a justice of the peace; or
- (b) extorts, demands, takes or accepts from any person any fee, gratuity or reward under the pretence of being a justice of the peace or of being capable of acting as a justice of the peace.

### 119 Protection of justices of the peace

A justice of the peace has, in the performance of his or her duties as a justice of the peace, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

### Division 2—Bail justices

#### 120 Definitions

In this Division—

*bail justice*, except in sections 120A, 120B, 120C, 120D, 120G and 120H, includes an acting bail justice;

*code of conduct* means the code of conduct prescribed by the regulations.

S. 120 amended by Nos 56/1989 s. 286(Sch. 2 item 11.2), 34/1990 s. 4(Sch. 3 item 12), 51/2000 s. 9, 48/2006 s. 42(Sch. item 22.8), substituted by No. 70/2010 s. 29.

#### 120A Appointment of bail justices

- (1) The Attorney-General, by instrument, may appoint as many bail justices as are necessary to perform the functions of bail justices under the **Bail Act 1977** and the **Children, Youth and Families Act 2005**.

S. 120A inserted by No. 70/2010 s. 29.

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- (2) A person is not eligible for appointment as a bail justice unless—
- (a) the person is of or over the age of 18 years and under the age of 65 years; and
  - (b) the person is an Australian citizen; and
  - (c) the person is not a bankrupt; and
  - (d) the property of the person is not subject to control under the law relating to bankruptcy; and
  - (e) the person has completed a prescribed course of training for appointment to the satisfaction of the Attorney-General; and
  - (f) the person is fluent in the English language; and
  - (g) the person ordinarily resides in Victoria.
- (3) Subject to this Division, a bail justice appointed under this section holds office for a period of 5 years.
- (4) The **Public Administration Act 2004** does not apply to a bail justice appointed under this section in respect of the office of bail justice.

S. 120B  
inserted by  
No. 70/2010  
s. 29.

#### **120B Application for appointment as bail justice**

- (1) A person may apply to the Attorney-General for appointment as a bail justice.
- (2) An application must—
- (a) include the prescribed particulars; and
  - (b) authorise the conduct of a police record check on the applicant; and
  - (c) be verified by statutory declaration.

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**120C Re-appointment of bail justices**

S. 120C  
inserted by  
No. 70/2010  
s. 29.

- (1) The Attorney-General, by instrument, may re-appoint a person as a bail justice.
- (2) A person is not eligible for re-appointment as a bail justice unless—
  - (a) the person has completed a prescribed course of training for re-appointment to the satisfaction of the Attorney-General; and
  - (b) during the immediately preceding period of appointment as a bail justice—
    - (i) the person was reasonably available to be rostered for duty as a bail justice; and
    - (ii) when rostered for duty as a bail justice, the person was reasonably available to perform that duty; and
  - (c) the person is not a bankrupt; and
  - (d) the property of the person is not subject to control under the law relating to bankruptcy; and
  - (e) the person ordinarily resides in Victoria.
- (3) Subject to this Division, a bail justice re-appointed under this section holds office for a period of 5 years.
- (4) The **Public Administration Act 2004** does not apply to a bail justice re-appointed under this section in respect of the office of bail justice.

**120D Application for re-appointment as bail justice**

S. 120D  
inserted by  
No. 70/2010  
s. 29.

- (1) A person may apply to the Attorney-General for re-appointment as a bail justice.
- (2) An application must—
  - (a) include the prescribed particulars; and

- (b) authorise the conduct of a police record check on the applicant; and
- (c) be verified by statutory declaration.

S. 120E  
inserted by  
No. 70/2010  
s. 29.

### 120E Appointment of acting bail justices

- (1) The Attorney-General, by instrument, may appoint as many acting bail justices as are necessary to perform the functions of bail justices under the **Bail Act 1977** and the **Children, Youth and Families Act 2005**.
- (2) A person is not eligible for appointment as an acting bail justice unless—
  - (a) the person is of or over the age of 70 years and under the age of 75 years; and
  - (b) immediately before appointment, the person was a bail justice for at least 5 years; and
  - (c) during the immediately preceding period of appointment as a bail justice or acting bail justice—
    - (i) the person was reasonably available to be rostered for duty as a bail justice; and
    - (ii) when rostered for duty as a bail justice, the person was reasonably available to perform that duty; and
  - (d) the person is not a bankrupt; and
  - (e) the property of the person is not subject to control under the law relating to bankruptcy; and
  - (f) the person ordinarily resides in Victoria.
- (3) Subject to this Division, an acting bail justice holds office for the period of 12 months from the date of his or her appointment.

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- (4) An acting bail justice—
    - (a) has the same powers and the same protection and immunity as a bail justice; and
    - (b) is subject to the same requirements as to conduct as a bail justice.
  - (5) An acting bail justice is eligible for re-appointment as an acting bail justice.
  - (6) An acting bail justice may only be removed from office in the same manner and on the same grounds as a bail justice is liable to be removed from office.
  - (7) The **Public Administration Act 2004** does not apply to an acting bail justice in respect of the office of acting bail justice.

**120F Application for appointment or re-appointment as acting bail justice**

S. 120F  
inserted by  
No. 70/2010  
s. 29.

- (1) A person may apply to the Attorney-General for appointment or re-appointment as an acting bail justice.
- (2) An application must—
  - (a) include the prescribed particulars; and
  - (b) authorise the conduct of a police record check on the applicant; and
  - (c) be verified by statutory declaration.

**120G Resignation**

S. 120G  
inserted by  
No. 70/2010  
s. 29.

- (1) A bail justice appointed under section 120A or re-appointed under section 120C may resign his or her office as bail justice by delivering to the Attorney-General a signed letter of resignation.
- (2) An acting bail justice appointed under section 120E may resign his or her office as acting bail justice by delivering to the Attorney-General a signed letter of resignation.

s. 120H

S. 120H  
inserted by  
No. 70/2010  
s. 29.

**120H Oath of office**

Every person who is appointed or re-appointed as a bail justice or acting bail justice must, before so acting, take an oath of office in the prescribed form and manner.

S. 120I  
inserted by  
No. 70/2010  
s. 29.

**120I Judge or magistrate may exercise power of bail justice**

A judge of the Supreme Court, a judge of the County Court or a magistrate may exercise any power conferred on a bail justice by or under any Act.

**121 Certain office-holders to be bail justices**

S. 121(1)  
substituted by  
No. 46/1998  
s. 7(Sch. 1).

(1) In this section *prescribed office* means a position in the public service with a classification that is prescribed as a classification to which this section applies.

(2) A person who holds a prescribed office is, by virtue of holding that office, a bail justice without the need for any appointment under this Act.

(3) A person who is a bail justice by virtue of holding a prescribed office—

S. 121(3)(aa)  
inserted by  
No. 70/2010  
s. 30.

(aa) before acting as a bail justice, must complete a prescribed course of training to the satisfaction of the Attorney-General; and

(a) must, before acting as a bail justice, take an oath of office in the prescribed form and manner; and

(b) is, while acting as a bail justice, entitled to be paid such remuneration and allowances as are from time to time fixed by the Governor in Council.

**121A Validation of certain acts**

If, before the commencement of section 25 of the **Criminal Justice Legislation (Miscellaneous Amendments) Act 2002**, a person holding a prescribed office under section 121 performed any act or made any decision under this or any other Act in purported exercise of a power to act as a bail justice appointed under section 120, the act or decision is not invalid only by reason of the lack of appointment of the person as a bail justice under section 120 of the **Magistrates' Court Act 1989**.

S. 121A  
inserted by  
No. 35/2002  
s. 16.

**122 Suspension from office**

(1) In this section—

*bail justice* means a bail justice appointed under section 120A, 120C or 120E.

- (2) The Secretary may suspend a bail justice from office if the Secretary believes that—
- (a) the bail justice has contravened the code of conduct; or
  - (b) the bail justice has unreasonably failed to comply with a direction given to the bail justice under section 124AA(1); or
  - (c) there may otherwise be grounds for removal of the bail justice from office.
- (3) As soon as practicable after the Secretary suspends a bail justice from office, the Secretary may either—
- (a) direct the bail justice to do one or more of the following—
    - (i) undertake specified training;
    - (ii) complete a prescribed course of training for re-appointment;

S. 122  
substituted by  
No. 70/2010  
s. 31.

- (iii) attend counselling with a person nominated by the Secretary; or
- (b) nominate a person for appointment under section 122A to undertake an investigation into the bail justice's conduct.
- (4) If the Secretary makes a direction under subsection (3)(a) and the bail justice complies with the direction to the satisfaction of the Secretary, the Secretary must lift the suspension.
- (5) If the Secretary makes a direction under subsection (3)(a) and the bail justice unreasonably fails to comply with the direction, the Secretary may nominate a person under subsection (3)(b).

S. 122A  
inserted by  
No. 70/2010  
s. 31.

#### **122A Investigation of bail justice**

- (1) As soon as practicable after the Secretary suspends a bail justice from office under section 122 and nominates a person to undertake an investigation into the bail justice's conduct, the Attorney-General must appoint the person nominated by the Secretary to undertake the investigation.
- (2) A person appointed under subsection (1) must—
  - (a) investigate the bail justice's conduct; and
  - (b) report to the Attorney-General on the investigation; and
  - (c) give a copy of the report to the bail justice and the Secretary.
- (3) A report under subsection (2)(b) may include a recommendation that the bail justice be removed from office.

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- (4) After receiving a report under subsection (2)(b) recommending removal, the Attorney-General, after consulting the Secretary, may recommend to the Governor in Council that the bail justice be removed from office.
  - (5) The person who conducted the investigation and the Attorney-General may only recommend that a bail justice be removed on the ground of proved misbehaviour, incapacity or dereliction of duty.
  - (6) The Attorney-General must not make a recommendation under subsection (4) unless the bail justice has been given a reasonable opportunity to make written and oral submissions to the person who conducted the investigation and the Secretary.
  - (7) In making a recommendation under subsection (4), the Attorney-General is entitled to rely on any findings contained in the report under subsection (2).
  - (8) If the Attorney-General decides not to make a recommendation under subsection (4)—
    - (a) the Attorney-General must inform the Secretary as soon as practicable after receiving the report under subsection (2)(b); and
    - (b) the Secretary must lift the suspension.

**122B Removal of bail justice from office**

The Governor in Council may remove a bail justice from office on the recommendation of the Attorney-General under section 122A but not otherwise.

S. 122B  
inserted by  
No. 70/2010  
s. 31.

### 123 Vacation of office

A person ceases to hold office as a bail justice if he or she—

S. 123(a)  
amended by  
No. 42/1995  
s. 224(Sch. 2  
item 24),  
substituted by  
No. 70/2010  
s. 32(a).

- (a) attains the age of 70 years or, in the case of an acting bail justice, 75 years; or

S. 123(ab)  
inserted by  
No. 70/2010  
s. 32(a).

- (ab) becomes a bankrupt or the property of the person becomes subject to control under the law relating to bankruptcy; or

S. 123(b)  
amended by  
No. 70/2010  
s. 32(b).

- (b) is, in accordance with section 122B, removed from office by the Governor in Council; or
- (c) being a bail justice by virtue of holding a prescribed office within the meaning of section 121, ceases to hold that prescribed office.

### 124 Protection of bail justices

A bail justice has, in the performance of his or her duties as a bail justice, the same protection and immunity as a magistrate has in the performance of his or her duties as a magistrate.

S. 124AA  
inserted by  
No. 70/2010  
s. 33.

#### 124AA Professional development and training

- (1) The Secretary may direct—

- (a) all bail justices; or
- (b) a specified class of bail justices; or
- (c) a specified bail justice—

to participate in a specified professional development or continuing education and training activity.

- 
- (2) A direction under subsection (1) may be given orally or in writing.
  - (3) A bail justice must comply with a reasonable direction under subsection (1) that is given to him or her.

**124AB Guidelines**

S. 124AB  
inserted by  
No. 70/2010  
s. 33.

- (1) The Secretary may make guidelines for or with respect to—
    - (a) the process for applications for appointment as a bail justice;
    - (b) the processes and administration of bail justices;
    - (c) the handling of complaints about bail justices.
  - (2) The Secretary may from time to time amend or revoke any guidelines made under subsection (1).
  - (3) As soon as practicable after making, amending or revoking guidelines under this section, the Secretary must give to each bail justice—
    - (a) a copy of the guidelines or the amendment;  
or
    - (b) notice of the revocation of the guidelines.
  - (4) The guidelines, or an amendment or revocation of the guidelines, take effect on the date that is specified in the guidelines, amendment or revocation (as the case requires).
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s. 124A

Pt 6A  
(Heading and  
ss 124A–  
124J)  
inserted by  
No. 44/1997  
s. 28.

## PART 6A—ADMINISTRATIVE SERVICES AGREEMENTS

### Division 1—Definitions

S. 124A  
inserted by  
No. 44/1997  
s. 28.

#### 124A Definitions

In this Part—

*contractor* means a party to an agreement with the  
Ministers under section 124B(1);

*Ministers* means the Attorney-General and the  
Minister administering Part I of the **Police  
Regulation Act 1958**;

S. 124A def. of  
*PERIN Court*  
repealed by  
No. 12/2006  
s. 173(1).

\* \* \* \* \*

*sub-contractor* means a sub-contractor of a  
contractor or of a sub-contractor.

### Division 2—Agreements

S. 124B  
inserted by  
No. 44/1997  
s. 28.

#### 124B Ministers may enter into administrative services agreements

(1) The Attorney-General and the Minister  
administering Part I of the **Police Regulation Act  
1958** may, for and on behalf of the Crown, jointly  
enter into an agreement with a person or body for  
the provision by that person or body of services of  
an administrative nature in support of the  
functions of—

S. 124B(1)(a)  
amended by  
No. 12/2006  
s. 173(2).

(a) the Infringements Court; or

(b) the sheriff; or

- (c) the police force of Victoria as carried on in the office known as the Traffic Camera Office immediately before an agreement under this subsection was first entered into in relation to that office; or
- (d) the police force of Victoria as carried on in the office known as the Fixed Penalties Payment Office immediately before an agreement under this subsection was first entered into in relation to that office; or
- (e) the police force of Victoria under Part 4 of the **Melbourne City Link Act 1995** that are of a similar nature to the functions of the police force of Victoria referred to in paragraph (c) or (d).
- (2) Nothing in this section limits, or takes away, any other power of the Attorney-General or the Minister administering Part I of the **Police Regulation Act 1958**, whether under this or any other Act or otherwise, to enter into agreements for the provision of services of an administrative nature in support of any functions for which he or she is responsible.

S. 124B(1)(d)  
amended by  
No. 102/1998  
s. 44(1).

S. 124B(1)(e)  
inserted by  
No. 102/1998  
s. 44(1).

**124C Subject matter of agreement**

S. 124C  
inserted by  
No. 44/1997  
s. 28.

An agreement under section 124B(1)—

- (a) must provide for the services to be provided by the contractor;
- (b) must provide for the fees, costs and charges to be paid to the contractor;
- (c) must provide for objectives and performance standards in relation to the contractor's operations under the agreement;

- (d) must provide for standards of probity applicable to persons employed by, or engaged to provide services for, the contractor in connection with the contractor's operations under the agreement;
- (e) must provide for compliance by the contractor with all relevant provisions of any Act, regulations or other instrument of a legislative character;
- (f) must provide for rights of access in favour of the Crown to any premises occupied by the contractor in connection with the contractor's operations under the agreement and to any document or equipment on those premises that is in the possession of the contractor and that relates to, or is used in connection with, the contractor's operations under the agreement;
- (g) must provide for the submission to the Ministers of periodic reports, or the periodic carrying out of a performance audit, in relation to the contractor's operations under the agreement;
- (h) must provide for the protection of information gained by the contractor in connection with the contractor's operations under the agreement and impose restrictions on access to the information and on its disclosure and use;
- (i) may provide for the extent of indemnities and warranties by parties to the agreement;
- (j) may specify liabilities, risks and insurances;
- (k) may provide for the provision by the contractor of a performance bond;

- (l) must provide for the office the holder of which is to be the principal officer for the purposes of the application of the **Ombudsman Act 1973** to the contractor as a provider of services under the agreement;
- (m) must provide for the Ministers or any of them, the Crown or any other person or body to take over, or nominate any other person or body to take over, in specified circumstances rights or obligations under the agreement or any other agreement or under any transaction;
- (n) may contain any other provisions that are not inconsistent with this Part, the regulations, the **Infringements Act 2006** or any regulations under that Act.

S. 124C(n)  
amended by  
No. 12/2006  
s. 173(3).

**124D Rights of access**

- (1) A contractor or sub-contractor must give any of the Ministers, the Secretary to the Department of Justice and any person authorised by any such Minister or the Secretary free and unfettered access at all times, together with any assistants and equipment that they consider necessary—
  - (a) to any premises occupied by the contractor or sub-contractor in connection with the contractor's operations under the agreement; and
  - (b) to all persons engaged or employed by the contractor or a sub-contractor in connection with the contractor's operations under the agreement; and

S. 124D  
inserted by  
No. 44/1997  
s. 28.

- (c) to all documents or equipment in the possession of the contractor or sub-contractor that relate to, or are used in connection with, the contractor's operations under the agreement—

for the purpose of ensuring compliance with this Part or the regulations or an agreement under section 124B(1).

Penalty: 50 penalty units.

- (2) A contractor or sub-contractor must give an administrator appointed under section 124E free and unfettered access at all times, together with any assistants and equipment that the administrator considers necessary—
  - (a) to any premises occupied by the contractor or sub-contractor in connection with the contractor's operations under the agreement; and
  - (b) to all persons engaged or employed by the contractor or a sub-contractor in connection with the contractor's operations under the agreement; and
  - (c) to all documents or equipment in the possession of the contractor or sub-contractor that relate to, or are used in connection with, the contractor's operations under the agreement—

for the purpose of enabling the administrator to carry out his or her functions and exercise his or her powers under that section.

Penalty: 50 penalty units.

- (3) Nothing in this section limits, or takes away, any function or power conferred on a person (including a person on whom a function or power is conferred by this section but not including a contractor or sub-contractor), whether under this or any other Act or otherwise including an agreement under section 124B(1).

**124E Right of intervention in management**

S. 124E  
inserted by  
No. 44/1997  
s. 28.

- (1) The Ministers may intervene in the management of the contractor's operations under an agreement under section 124B(1) if they determine that—
- (a) a default has occurred that entitles the Crown to terminate the agreement; or
  - (b) an emergency situation exists that requires such intervention in the interests of public safety; or
  - (c) the contractor's operations under the agreement are preventing or impairing the efficient—
    - (i) detection of infringements; or
    - (ii) processing of infringement notices; or
    - (iii) enforcement of penalties, fines or warrants; or
    - (iv) functioning of any court.
- (2) If the Ministers intervene in the management of the contractor's operations under an agreement, they may appoint an administrator to manage those operations until they determine that—
- (a) the emergency is over; or
  - (b) the contractor is able to manage the contractor's operations under the agreement to the satisfaction of the Ministers.

- 
- (3) If an administrator is appointed under subsection (2), then for the period of that appointment—
- (a) the contractor or a sub-contractor must act in relation to the management of the contractor's operations under the agreement in accordance with the directions of the administrator; or
  - (b) the contractor or a sub-contractor must, as directed by the administrator, cease to act in relation to the management of the contractor's operations under the agreement completely or to the extent specified in the direction.

Penalty: 50 penalty units.

- (4) A person engaged or employed by the contractor or a sub-contractor to act in relation to the management of the contractor's operations under an agreement must comply with the directions of the administrator in doing so.

Penalty: 50 penalty units.

- (5) An administrator appointed under subsection (2) has and may carry out or exercise for the period of the appointment all of the functions or powers of the contractor or any sub-contractor in relation to the management of the contractor's operations under the agreement.
- (6) The Secretary to the Department of Justice must provide the administrator with any assistance necessary to the carrying out of his or her functions or exercise of his or her powers under this section.

- (7) Nothing in this section limits, or takes away, any function or power conferred on a person (including a person on whom a function or power is conferred by this section but not including a contractor or sub-contractor), whether under this or any other Act or otherwise including an agreement under section 124B(1).

**124F Audit rights**

S. 124F  
inserted by  
No. 44/1997  
s. 28.

- (1) The Ministers may at any time during the term, or the 7 year period immediately following the expiration, of an agreement under section 124B(1) or any renewal of such an agreement, appoint a person as an independent auditor to audit the documents of the contractor that relate to the contractor's operations under the agreement.
- (2) A contractor or sub-contractor must—
- (a) make all documents in its actual possession relating to the contractor's operations under the agreement available to an independent auditor appointed under subsection (1) at the time and place specified by that auditor; and
  - (b) provide an independent auditor appointed under subsection (1) with any assistance necessary to enable the audit to be undertaken.

Penalty: 50 penalty units.

**124G Status of documents**

S. 124G  
inserted by  
No. 44/1997  
s. 28.

- (1) For the purposes of the **Freedom of Information Act 1982**—
- (a) any document in existence immediately before an agreement under section 124B(1) was entered into and handed over to the contractor in accordance with the agreement remains; and

(b) any document created or received by the contractor or a sub-contractor after an agreement under section 124B(1) was entered into as a result of the contractor's operations under the agreement is—

in the possession of the Department of Justice and that Act applies to that document to the same extent to which it would if the agreement had never been entered into.

- (2) All proprietary rights and interests in any document referred to in subsection (1) remain with, or on the creation or receipt of the document by the contractor or sub-contractor become vested in, the Crown.
- (3) All documents referred to in subsection (1) are public records within the meaning of the **Public Records Act 1973**.

S. 124H  
inserted by  
No. 44/1997  
s. 28.

#### 124H Investigation of administrative actions

- (1) Subject to subsection (2), the **Ombudsman Act 1973** applies to a contractor or a sub-contractor in its capacity as a provider of services under an agreement under section 124B(1) or a sub-contract agreement as if—
- (a) the contractor or sub-contractor were a public statutory body within the meaning of that Act; and
- (b) the holder of the office specified in the agreement under section 124B(1) or in the sub-contract agreement for the purposes of the application of the **Ombudsman Act 1973** were the principal officer of that public statutory body; and

- (c) the persons employed by the contractor or sub-contractor in connection with the contractor's operations under the agreement were employees of that public statutory body.
- (2) Nothing in this section applies the **Ombudsman Act 1973** to a contractor or sub-contractor—
  - (a) in any capacity other than that mentioned in subsection (1); or
  - (b) with respect to any period during which services were not actually being provided by the contractor or sub-contractor under an agreement under section 124B(1) or a sub-contract agreement.

**124I Unauthorised access to or interference with data**

S. 124I  
inserted by  
No. 44/1997  
s. 28.

- (1) A person must not intentionally and without lawful authority—
  - (a) obtain access, or attempt to obtain access, to any data stored in a computer that is under the control of a contractor or sub-contractor and that relates to the contractor's operations under an agreement under section 124B(1) or was gained in the course of those operations; or
  - (b) alter or delete, or attempt to alter or delete, any such data or enter, or attempt to enter, data into the database in which any such data is contained; or
  - (c) interfere, or attempt to interfere, in any other way with a database containing any such data.

Penalty: 100 penalty units.

- (2) The Secretary to the Department of Justice may, by writing, authorise a person engaged or employed by a contractor or sub-contractor or any other person to do, in relation to all data referred to in subsection (1) or any such data of a specified class, anything that, but for that authorisation, the person would be prohibited from doing by subsection (1).
- (3) For the purposes of subsection (1) a person must be taken as having lawful authority to do a thing referred to in that subsection if—
- (a) in the case of a person engaged or employed by a contractor or sub-contractor or any other person, he or she is authorised to do that thing under subsection (2); and
  - (b) in the case of a person who is—
    - (i) the principal registrar of the Magistrates' Court or a registrar or deputy registrar at the Infringements Court; or
    - (ii) the sheriff, a deputy sheriff or any person who is a bailiff for the purposes of the **Supreme Court Act 1986**; or
    - (iii) a member of the police force of Victoria—he or she does that thing in the exercise of official powers or the discharge of official functions or duties.

S. 124I(3)(b)(i)  
amended by  
No. 12/2006  
s. 173(4).

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**124J Confidentiality**

S. 124J  
inserted by  
No. 44/1997  
s. 28.

- (1) A person who is, or has at any time been—
- (a) a contractor; or
  - (b) a sub-contractor; or
  - (c) a person employed by, or engaged to provide services for, a contractor or sub-contractor;  
or
  - (d) authorised by the Secretary to the Department of Justice under section 124I(2)—

is bound by this section.

- (2) A person bound by this section must not directly or indirectly, except in the exercise of powers or performance of functions in connection with a contractor's operations under an agreement under section 124B(1)—
- (a) make a record of, or divulge to any person any information acquired by reason of being a person referred to in subsection (1); or
  - (b) make use of any such information for a purpose other than in the exercise of those powers or performance of those functions.

Penalty: 100 penalty units.

- (3) Nothing in subsection (2) prevents a person bound by this section from—
- (a) producing a document to a court in the course of any criminal or civil proceedings;  
or
  - (b) divulging to a court any information that has come to the notice of the person by reason of being a person referred to in subsection (1).

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 6A—Administrative Services Agreements

s. 124J

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(4) In this section—

*court* includes any tribunal, authority or person  
having power to require the production of  
documents or the answering of questions;

*produce* includes permit access to.

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**PART 7—MISCELLANEOUS**

**125 Business to be conducted in open court**

- (1) All proceedings in the Court are to be conducted in open court, except where otherwise provided by this or any other Act or the Rules.
- (2) The person constituting the Court and legal practitioners appearing before the Court must not robe.

S. 125(2)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 53.5).

**126 Power to close proceedings to the public**

- (1) The Court may make an order under this section if in its opinion it is necessary to do so in order not to—
  - (a) endanger the national or international security of Australia; or
  - (b) prejudice the administration of justice; or
  - (c) endanger the physical safety of any person; or
  - (d) cause undue distress or embarrassment to the complainant in a proceeding that relates, wholly or partly, to a charge for a sexual offence<sup>15</sup>; or
  - (e) cause undue distress or embarrassment to a witness under examination in a proceeding that relates, wholly or partly, to a charge for a sexual offence.

S. 126(1)(d)  
inserted by  
No. 8/1991  
s. 13,  
amended by  
Nos 33/1994  
s. 17(1),  
30/2010  
s. 87(1).

S. 126(1)(e)  
inserted by  
No. 33/1994  
s. 17(1)<sup>16</sup>,  
substituted by  
No. 30/2010  
s. 87(2).

- (2) The Court may in the circumstances mentioned in subsection (1)—
- (a) order that the whole or any part of a proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding; or
  - (c) make an order prohibiting the publication of a report of the whole or any part of a proceeding or of any information derived from a proceeding; or
  - (d) make an order prohibiting the publication of any specified material, or any material of a specified kind, relevant to a proceeding that is pending in the Court.
- (3) If an order has been made under this section, the Court must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.
- (4) A person must not contravene an order made and posted under this section.
- Penalty applying to this subsection: 1000 penalty units or imprisonment for 3 months.
- (5) The Court must specify a period for which an order made under subsection (2)(d) is to remain in force and the order shall remain in force for that period unless it is sooner set aside by the Court.

S. 126(2)(c)  
amended by  
No. 10/1999  
s. 24(1).

S. 126(2)(d)  
inserted by  
No. 10/1999  
s. 24(1).

S. 126(5)  
inserted by  
No. 10/1999  
s. 24(2),  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.41).

- (6) The Court may set aside or vary an order made under subsection (2)(d) on an application made by any person, whether or not a party to the proceeding pending in the Court.

S. 126(6)  
inserted by  
No. 10/1999  
s. 24(2),  
substituted by  
No. 68/2009  
s. 97(Sch.  
item 82.42).

- (7) Nothing in subsection (6) prevents the Supreme Court or the County Court, in the exercise of any jurisdiction, power or authority to do so conferred on it, making an order to the same or a similar effect as an order under subsection (2)(d), including an order that has effect from immediately an order under subsection (2)(d) ceases to be in force.

S. 126(7)  
inserted by  
No. 10/1999  
s. 24(2).

**126A Power to bind over to keep the peace**

- (1) The Court may, on the written application of a person, order another person to enter into a bond, with or without surety or sureties, to keep the peace or to be of good behaviour.
- (2) An application under subsection (1) must be supported by evidence on oath or by affidavit.
- (3) The parties to a proceeding under this section and any other witnesses may be called and examined and cross-examined and costs may be awarded as in any other proceeding in the Court.
- (4) The Court may order that an accused who does not comply with an order under subsection (1) be imprisoned until he or she does comply with it or for 12 months, whichever is the shorter.
- (5) An order under subsection (1) may only be made on an application in accordance with this section unless it is otherwise expressly provided by any other Act.

S. 126A  
inserted by  
No. 49/1991  
s. 119(7)  
(Sch. 4  
item 13.7).

S. 126A(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.43).

s. 127

## 127 Witness order

S. 127  
amended by  
No. 15/2005  
s. 11(2) (ILA  
s. 39B(1)).

(1) The Court may, and must if required by any party to a proceeding, at any time during the proceeding, order all witnesses other than—

(a) the informant or the plaintiff; and

(b) the accused or the defendant; and

S. 127(1)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.44).

S. 127(1)(ba)  
inserted by  
No. 15/2005  
s. 11(1),  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.45).

\* \* \* \* \*

(c) the witness under examination—

to leave the Court and to remain outside and beyond the hearing of the Court until required to give evidence.

Note to  
s. 127(1)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 82.46).

### Note

Section 336A of the **Criminal Procedure Act 2009** provides that a victim of an offence is entitled to be present in court unless the court orders the victim to leave."

S. 127(2)  
inserted by  
No. 15/2005  
s. 11(2).

(2) Nothing in this section prevents the Court from ordering a witness to leave the Court and to remain outside and beyond the hearing of the Court at any time after giving evidence if the Court considers it appropriate to do so.

## 128 Power to adjourn proceeding

S. 128(1)  
amended by  
No. 7/2009  
s. 427(1)(g) (as  
amended by  
No. 68/2009  
s. 54(m)).

(1) The Court may, on the application of a party to a proceeding other than a criminal proceeding or without any such application, adjourn the hearing of the proceeding—

(a) to such times and places; and

- (b) for such purposes; and  
(c) on such terms as to costs or otherwise—  
as it considers necessary or just in the  
circumstances.

\* \* \* \* \*

S. 128(2)  
repealed by  
No. 7/2009  
s. 427(1)(h) (as  
amended by  
No. 68/2009  
s. 54(m)).

- (3) If the Court has adjourned the hearing of a  
proceeding other than a criminal proceeding to a  
particular time, it may order that the hearing be  
held or resumed before that time.
- S. 128(3)  
amended by  
No. 7/2009  
s. 427(1)(i) (as  
amended by  
No. 68/2009  
ss 49(p),  
54(m)).

- (4) The Court may only make an order under  
subsection (3) with the consent of all the parties or  
on the application of a party who has given  
reasonable notice of the application to the other  
party or parties.

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S. 128(5)  
amended by  
No. 4/1997  
s. 8(2),  
repealed by  
No. 7/2009  
s. 427(1)(j) (as  
amended by  
No. 68/2009  
s. 54(m)).

\* \* \* \* \*

S. 128(6)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 22.9),  
repealed by  
No. 7/2009  
s. 427(1)(j) (as  
amended by  
No. 68/2009  
s. 54(m)).

Magistrates' Court Act 1989  
No. 51 of 1989  
Part 7—Miscellaneous

s. 131

<p>S. 128A inserted by No. 35/2002 s. 17, amended by No. 39/2003 s. 6, repealed by No. 68/2009 s. 97(Sch. item 82.47).</p>	*	*	*	*	*
<p>S. 129 amended by Nos 12/1993 s. 5(a), 68/2009 s. 97(Sch. items 82.48, 82.49), repealed by No. 69/2009 s. 54(Sch. Pt 1 item 34.10).</p>	*	*	*	*	*
<p>S. 130 repealed by No. 68/2009 s. 97(Sch. item 82.50).</p>	*	*	*	*	*

### 131 Costs to be in the discretion of the Court

- |   |   |
|---|---|
| <p>(1) The costs of, and incidental to, all proceedings in the Court are in the discretion of the Court and the Court has full power to determine by whom, to whom and to what extent the costs are to be paid.</p> |   |
| <p>S. 131(2)<br/>amended by<br/>No. 64/1996<br/>s. 36.</p>  | <p>(2) Subsection (1) applies unless it is otherwise expressly provided by this or any other Act or by the Rules or the regulations.</p>  |
| <p>S. 131(2A)<br/>inserted by<br/>No. 33/1994<br/>s. 18(1).</p>   | <p>(2A) In exercising its discretion under subsection (1) in a proceeding, the Court may take into account any unreasonable act or omission by, or on behalf of, a party to the proceeding that the Court is satisfied resulted in prolonging the proceeding.</p> |

- (2B) The Court must not make an order awarding costs against a party in the exercise of its discretion under subsection (1) on account of any unreasonable act or omission by, or on behalf of, that party that the Court is satisfied resulted in prolonging the proceeding without giving that party a reasonable opportunity to be heard. **S. 131(2B) inserted by No. 33/1994 s. 18(1).**
- (2C) If the Court determines to award costs against an informant who is a member of the police force, the order must be made against the Chief Commissioner of Police. **S. 131(2C) inserted by No. 33/1994 s. 18(1).**
- (3) If— **S. 131(3) amended by No. 68/2009 s. 97(Sch. item 82.51).**
- (a) a charge-sheet containing one or more charges is filed with a registrar; and **S. 131(3)(a) amended by No. 33/1994 s. 27(2).**
- (b) no filing fee is payable because of an exemption contained in the regulations; and
- (c) the accused is convicted of one or more of the alleged offences and is ordered to pay a fine— **S. 131(3)(c) amended by No. 68/2009 s. 97(Sch. item 82.51).**
- the Court must order the accused to pay by way of costs, in addition to the amount of the fine and any other costs, the amount of the filing fee that, but for the exemption, would have been payable.
- (4) This section and section 132 apply to a purported proceeding in the Court which is beyond the jurisdiction of the Court as if the purported proceeding were within jurisdiction.

**Note**

See section 17D(1)(b) to (d) of the **Supreme Court Act 1986**.

**Note to s. 131 inserted by No. 78/2008 s. 16.**

s. 131A

S. 131A  
inserted by  
No. 78/2008  
s. 17.

**131A Costs may be determined by Costs Court**

Despite section 131(1), the Court may order that the costs of, and incidental to, a proceeding in the Court be assessed, settled, taxed or reviewed by the Costs Court.

**Note**

See section 146 of the **Supreme Court Act 1986** which deals with transitional matters relating to the Costs Court.

**132 Costs liability of legal practitioner**

S. 132(1)  
amended by  
Nos 33/1994  
s. 18(2),  
35/1996  
s. 453(Sch. 1  
item 53.6(a)).

(1) If a legal practitioner for a party to a proceeding, whether personally or through a servant or agent, has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by any other misconduct or default, the Court may make an order that—

S. 132(1)(a)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 53.6(a)).

(a) all or any of the costs between the legal practitioner and the client be disallowed or that the legal practitioner repay to the client the whole or part of any money paid on account of costs; or

S. 132(1)(b)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 53.6(a)).

(b) the legal practitioner pay to the client all or any of the costs which the client has been ordered to pay to any party; or

S. 132(1)(c)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 53.6(a)).

(c) the legal practitioner pay all or any of the costs payable by any party other than the client.

S. 132(2)  
amended by  
Nos 33/1994  
s. 18(2),  
35/1996  
s. 453(Sch. 1  
item 53.6(a)).

(2) Without limiting subsection (1), a legal practitioner is in default for the purposes of that subsection if any proceeding cannot conveniently be heard or proceed, or fails or is adjourned without any useful progress being made, because the legal practitioner failed to—

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- (a) attend in person or by a proper representative; or
- (b) file any document which ought to have been filed; or
- (c) lodge or deliver any document for the use of the Court which ought to have been lodged or delivered; or
- (d) be prepared with any proper evidence or account; or
- (e) otherwise proceed.
- (3) The Court must not make an order under subsection (1) without giving the legal practitioner a reasonable opportunity to be heard. **S. 132(3) amended by No. 35/1996 s. 453(Sch. 1 item 53.6(a)).**
- (4) The Court may order that notice of any proceeding or order against a legal practitioner under this section be given to the client in such manner as the Court directs. **S. 132(4) amended by No. 35/1996 s. 453(Sch. 1 item 53.6(a)).**
- \* \* \* \* \*
- S. 132(5) amended by No. 33/1994 s. 18(2), repealed by No. 35/1996 s. 453(Sch. 1 item 53.6(b)).**

### 133 Contempt in face of the Court

- (1) If it is alleged or appears to the Court that a person is guilty of contempt of court committed in the face of the Court, the Court may—
- (a) by oral order direct that the person be arrested and brought before the Court; or
- (b) issue a warrant for his or her arrest in the form prescribed by the Rules.

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- (2) On the person being brought before the Court, the Court must cause him or her to be informed of the contempt with which he or she is charged and adopt any procedure that the Court thinks fit.
  - (3) The **Bail Act 1977** applies, with any necessary modifications, to and in respect of a person brought before the Court under this section as if the person were accused of an offence and were being held in custody in relation to that offence.
  - (4) If the Court finds that the person is guilty of contempt of court, it may order that the person be sentenced to a term of imprisonment of not more than six months or fined not more than 25 penalty units.
  - (5) If a person found guilty of contempt of court is ordered to be imprisoned, the Court may order his or her discharge before the end of the term.
  - (6) The Court may accept an apology for a contempt and may remit any punishment for it either wholly or in part.
  - (7) Persons who by conduct in the Court or in the precincts of the Court interrupt the proceedings of the Court in circumstances in which it appears to the Court that those persons are acting in concert with the object of interrupting the proceedings of the Court may each be dealt with under this section for contempt of court committed in the face of the Court.

### 134 Contempt of court

- (1) A person is guilty of contempt of court if—
  - (a) having been summoned as a witness and having been given or tendered any conduct money required to be given or tendered, the person refuses or neglects without sufficient cause to attend or to produce any documents

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- or things required by the summons to be produced; or
- (b) having been summoned as a witness and having attended as required, the person refuses to be sworn or to answer any lawful question; or
  - (c) being examined as a witness or being present in court and required to give evidence, the person refuses to be sworn or to answer any lawful question or, without sufficient excuse, to produce any documents or things that the person has been or is required to produce; or
  - (d) being present in court and required to give evidence, the person wilfully disobeys an order made under section 127; or
  - (e) in the opinion of the magistrate the person is guilty of wilful prevarication.
- (2) In the case of a contempt referred to in subsection (1), the Court may direct the arrest of the person and, on the person being brought before the Court, the Court must cause him or her to be informed of the contempt with which he or she is charged and adopt any procedure that the Court thinks fit.
- (3) If the Court finds that the person is guilty of a contempt referred to in subsection (1), it may order—
- (a) that the person be sentenced to a term of imprisonment of not more than 1 month; or
  - (b) that the person be fined not more than 5 penalty units and that in default of payment of the fine within a specified time the person be imprisoned for a term of not more than 1 month.

S. 134(4)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.52).

- (4) Without limiting subsection (3)—
- (a) if a person commits a contempt referred to in subsection (1) at a committal proceeding, the Court may adjourn the proceeding for a period of not more than 8 clear days and section 331 of the **Criminal Procedure Act 2009** applies as if the person were an accused in a criminal proceeding; and
  - (b) if at the adjourned hearing the contempt is repeated, the Court may—
    - (i) proceed under paragraph (a); or
    - (ii) punish for the contempt in any manner provided in subsection (3).
- (5) A person is guilty of contempt of court if—
- (a) having been summoned in accordance with the Rules to attend at a sitting of the Court to be orally examined by the appropriate registrar concerning the failure to comply with an order for the payment of money and having been given or tendered any conduct money required to be given or tendered, the person refuses or neglects without sufficient cause to attend; or
  - (ab) having been summoned under Part 9 of the **Infringements Act 2006** to attend at the Court to be orally examined by an infringements registrar and having been given any conduct money required to be given or tendered, the person refuses or neglects without sufficient cause to attend; or
  - (b) having been so summoned and having attended as required, the person refuses to be sworn or to answer any lawful question; or
  - (c) in the opinion of the appropriate registrar the person is guilty of wilful prevarication.

S. 134(5)(ab)  
inserted by  
No. 12/2006  
s. 174.

- (6) In the case of a contempt referred to in subsection (5), the appropriate registrar must report the contempt to the next practicable sitting of the Court constituted by a magistrate at the proper venue and the Court may direct the arrest of the person and may punish for the contempt as in the case of a contempt referred to in subsection (1).
- (7) If a contempt referred to in this section also constitutes a contempt of court committed in the face of the Court, the Court may deal with the contempt under this section or under section 133, as it thinks fit.
- (8) The **Bail Act 1977** applies, with any necessary modifications, to and in respect of a person brought before the Court under this section as if the person were accused of an offence and were being held in custody in relation to that offence.

S. 134(8)  
inserted by  
No. 34/1990  
s. 4(Sch. 3  
item 13).

### **135 Enforcement of orders not for the payment of money**

- (1) If by or under this or any other Act a power (whether or not expressed as a power to make an order) is given to the Court—
  - (a) of requiring any person to do or abstain from doing any act or thing, other than the payment of money; or
  - (b) of requiring any act or thing, other than the payment of money, to be done or left undone—

the Court may exercise the power by an order or orders.

- 
- (2) If the Court makes an order under subsection (1), it may—
- (a) attach to the order conditions as to time or mode of action which are authorised by or under any Act or which the Court thinks just; and
  - (b) suspend or rescind the order on any undertaking being given or condition being performed that the Court thinks just; and
  - (c) generally make any arrangement for carrying into effect the power that the Court thinks just.
- (3) Subject to subsection (4), a person who defaults in complying with an order made under subsection (1) is for the default liable—
- (a) to pay a fine of not more than 1 penalty unit for every day during which the default continues; or
  - (b) to be imprisoned for so long as the default continues.
- (4) A person is not liable under this section to—
- (a) imprisonment for a period or periods amounting in the aggregate to more than 2 months; or
  - (b) the payment of any sums exceeding in the aggregate 40 penalty units—
- for non-compliance with the requirement of the Court (whether made by one or more orders) to do or abstain from doing any act or thing.

### **136 Directions**

The Court may, except where otherwise provided by this or any other Act, at any stage of a proceeding, give any direction for the conduct of the proceeding which it thinks conducive to its

effective, complete, prompt and economical determination.

**136A Court registrars etc. may be directed to act anywhere**

Despite anything to the contrary in any Act, an appointment as—

- (a) a registrar or bailiff of the Magistrates' Court; or
- (b) a registrar or deputy registrar of the Children's Court—

authorises that person to act as such anywhere in Victoria as directed by the Minister responsible for the public service body (within the meaning of the **Public Administration Act 2004**) or the appropriate public service body agency Head (within the meaning of that Act).

S. 136A inserted by No. 46/1998 s. 7(Sch. 1), substituted by No. 108/2004 s. 117(1) (Sch. 3 item 118.3).

**137 Forfeitures may be sold**

- (1) All property (other than money) forfeited by or recovered in the Court may, except where otherwise provided by this or any other Act, be sold or disposed of or dealt with in any manner that the Court directs.
- (2) The proceeds of a sale, disposal or dealing under subsection (1) must be applied in the same manner as if the proceeds were a fine imposed under the Act on which the forfeiture is founded.

**137A How unsold seized property to be handled**

- (1) This section applies if personal property seized, taken or coming into the possession of the sheriff in the execution of a warrant or warrants under section 74(a), 82D(1)(b)(i), 82F(2) or 111(3)(a)—
  - (a) is not to be sold; or

S. 137A inserted by No. 99/2000 s. 6.

- (b) is offered for sale but is not bought; or
  - (c) is bought, but is not collected by the buyer.
- (2) The sheriff—
- (a) must give the owner of the property (or the person from whom the property was seized if the owner is not known) a written notice—
    - (i) stating that the property is available for retrieval; and
    - (ii) providing details of how the property may be retrieved; and
  - (b) may dispose of the property in any manner the sheriff considers appropriate if the property has not been retrieved within 3 months after the date the notice was given or sent.
- (3) It is sufficient compliance with subsection (2)(a) if the sheriff sends the notice by post to the last known address of the person.

### 138 Investment of trust money

- (1) The whole or any part of any money held in a trust account of the Court may, except where otherwise provided by this or any other Act, whether already in a state of investment or not, be invested—
- (a) on deposit with an authorised deposit-taking institution; or

S. 138(1)(a)  
amended by  
No. 11/2001  
s. 3(Sch.  
item 44.2).

S. 138(1)(b)  
repealed by  
No. 18/1994  
s. 66(Sch. 2  
item 16).

\* \* \* \* \*

- (c) in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958**.

- (2) Despite anything to the contrary in any other Act or any rule of law, all income derived from the investment of money under subsection (1) must be paid into the Consolidated Fund.

**139 Manner of service where none is prescribed**

S. 139 substituted by No. 68/2009 s. 97(Sch. item 82.53).

- (1) If by or under this Act a person is required to serve a document and no provision is made, other than in this section, as to how the document is to be served, the document must be served by—
- (a) giving a copy of the document to the person to be served; or
  - (b) if the person does not accept the copy, putting the copy down in the person's presence and telling the person the nature of the document; or
  - (c) leaving a copy of the document for the person at the person's last known or usual place of residence or business with a person who appears to be of or over the age of 16 years.
- (2) If the person to be served is a company or registered body (within the meaning of the Corporations Act), a document may be served on the company or body in accordance with section 109X or 601CX of that Act, as the case requires.

**139A Supreme Court—limitation of jurisdiction**

S. 139A inserted by No. 64/1996 s. 37, amended by No. 26/2002 s. 4 (ILA s. 39B(1)).

- (1) It is the intention of section 108A to alter or vary section 85 of the **Constitution Act 1975**.

\* \* \* \* \*

S. 139A(1A) inserted by No. 26/2002 s. 4, repealed by No. 68/2009 s. 97(Sch. item 82.54).

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s. 140

S. 139A(2)  
inserted by  
No. 35/2002  
s. 18.

(2) It is the intention of section 121A to alter or vary  
section 85 of the **Constitution Act 1975**.

S. 139A(3)  
inserted by  
No. 39/2003  
s. 7,  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.54).

\* \* \* \* \*

S. 139A(4)  
inserted by  
No. 8/2008  
s. 6,  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 82.54).

\* \* \* \* \*

#### 140 Regulations

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

S. 140(1)(a)  
amended by  
Nos 34/1990  
s. 4(Sch. 3  
item 14),  
9/2009  
s. 76(1).

(a) the fees, costs and charges payable in respect  
of any proceeding in the Court; and

S. 140(1)(ab)  
inserted by  
No. 64/1996  
s. 38(a),  
repealed by  
No. 19/2005  
s. 8.

\* \* \* \* \*

S. 140(1)(b)  
amended by  
No. 12/2006  
s. 169(f).

(b) the fees, costs and charges payable in respect  
of the exercise by a registrar of any  
jurisdiction, power or authority vested in the  
registrar as infringements registrar; and

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s. 140

*	*	*	*	*		
					(c) prescribing the fees and charges payable for the supply by the Court of any recording or any part of a recording of a proceeding; and	S. 140(1)(ba) inserted by No. 12/2001 s. 7, repealed by No. 9/2009 s. 76(2).  S. 140(1)(c) repealed by No. 64/1996 s. 38(b), new s. 140(1)(c) inserted by No. 51/2000 s. 7.
*	*	*	*	*		S. 140(1)(ca) inserted by No. 35/2002 s. 19, repealed by No. 19/2005 s. 8.
*	*	*	*	*		S. 140(1)(d) repealed by No. 19/2005 s. 8.
*	*	*	*	*		S. 140(1)(da) inserted by No. 34/1990 s. 4(Sch. 3 item 15), repealed by No. 19/2005 s. 8.
					(db) prescribing municipal districts or subdivisions of municipal districts as areas in which a member of the police force is not required to serve process in a civil proceeding; and	S. 140(1)(db) inserted by No. 34/1990 s. 4(Sch. 3 item 15).
*	*	*	*	*		S. 140(1)(e)(f) repealed by No. 68/2009 s. 97(Sch. item 82.55).

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s. 140

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	*	*	*	*	*
S. 140(1)(g) repealed by No. 4/1997 s. 8(3), new s. 140(1)(g) inserted by No. 87/2005 s. 27(1), repealed by No. 68/2009 s. 97(Sch. item 82.55).					
			(h)	prescribing classes of complaints for the purposes of Division 2 of Part 5; and	
S. 140(1)(i) repealed by No. 19/2005 s. 8, new s. 140(1)(i) inserted by No. 70/2010 s. 34(1).			(i)	prescribing a code of conduct for bail justices and acting bail justices; and	
S. 140(1)(j) repealed by No. 19/2005 s. 8, new s. 140(1)(j) inserted by No. 70/2010 s. 34(1).			(j)	prescribing training courses for appointment as a bail justice and training courses for re- appointment as a bail justice for the purposes of Division 2 of Part 6; and	
S. 140(1)(k) repealed by No. 19/2005 s. 8, new s. 140(1)(k) inserted by No. 70/2010 s. 34(1).			(k)	prescribing training courses for the purposes of section 121(3)(aa); and	
S. 140(1)(l) repealed by No. 19/2005 s. 8, new s. 140(1)(l) inserted by No. 70/2010 s. 34(1).			(l)	prescribing particulars to be included in applications under Division 2 of Part 6; and	

(la) prescribing the form of an oath of office as a bail justice or an acting bail justice and the manner of taking that oath; and

**S. 140(1)(la)**  
inserted by  
No. 33/1994  
s. 5(2),  
repealed by  
No. 19/2005  
s. 8, new  
s. 140(1)(la)  
inserted by  
No. 70/2010  
s. 34(1).

(m) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) A power conferred by subsection (1) to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

- (a) specific fees;
- (b) maximum fees;
- (c) minimum fees;
- (d) fees that vary according to value or time;
- (e) the manner of payment of fees;
- (f) the time or times at which fees are to be paid.

(2A) Regulations made under this Act may—

- (a) provide for the reduction, waiver or refund, in whole or in part, of the fees, costs and charges fixed by regulation under subsection (1)(a) or (b); and
- (b) provide, in specified circumstances, for the reinstatement or payment, in whole or in part, of any fee, cost or charge reduced, waived or refunded by the regulations.

**S. 140(2A)**  
inserted by  
No. 87/2005  
s. 27(2).

s. 140

S. 140(2B)  
inserted by  
No. 87/2005  
s. 27(2).

(2B) Without limiting subsection (3)(b), if the regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, cost or charge pursuant to subsection (2A), the reduction, waiver or refund—

(a) may be expressed to apply either generally or specifically—

(i) in respect of certain matters or classes of matters;

(ii) in respect of certain persons or classes of persons;

S. 140  
(2B)(a)(iii)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.56).

(iii) in respect of a specified class of infringement offence within the meaning of the **Infringements Act 2006**, including offences committed before or after the commencement of the regulations providing for the reduction, waiver or refund, in whole or in part, of the fees, costs and charges;

S. 140  
(2B)(a)(iv)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.57).

(iv) in respect of a specified class of infringement notice within the meaning of the **Infringements Act 2006**, including notices issued or served before or after the commencement of the regulations providing for the reduction, waiver or refund, in whole or in part, of the fees, costs and charges;

S. 140  
(2B)(a)(v)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 82.58).

(v) in respect of a specified enforcement agency or class of enforcement agency within the meaning of the **Infringements Act 2006**;

(vi) for a specified period or periods or from a specified commencement date to a specified expiry date;

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- (vii) in respect of any combination of the matters referred to in paragraphs (i) to (vi);
- (b) may be subject to specified conditions.
- (3) Regulations made under this Act may be made—
- (a) so as to confer a discretionary authority on a specified court official or a specified class of court officials; and
- (b) so as to provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations providing for the imposition of fees; and
- (c) so as to be of limited or general application; and
- (d) so as to differ according to differences in time, place or circumstances; and
- (e) so as to require matters affected by the regulations to be—
- (i) in accordance with specified standards or specified requirements; or
- (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or
- (iii) as specified in both subparagraphs (i) and (ii); and
- S. 140(3)(b) amended by No. 87/2005 s. 27(3)(a).
- S. 140(3)(c) inserted by No. 87/2005 s. 27(3)(b), amended by No. 70/2010 s. 34(2).
- S. 140(3)(d) inserted by No. 70/2010 s. 34(3).
- S. 140(3)(e) inserted by No. 70/2010 s. 34(3).

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S. 140(3)(f) inserted by No. 70/2010 s. 34(3).	(f)	so as to leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person.			
S. 140(4)(5) repealed by No. 10/1999 s. 31(1).	*	*	*	*	*
New s. 141 inserted by No. 4/1997 s. 7, repealed by No. 19/2005 s. 9(2).	*	*	*	*	*
New s. 142 inserted by No. 10/1999 s. 6, repealed by No. 19/2005 s. 9(2).	*	*	*	*	*
New s. 143 inserted by No. 51/2000 s. 8, repealed by No. 19/2005 s. 9(2).	*	*	*	*	*
S. 144 inserted by No. 27/2002 s. 8, repealed by No. 19/2005 s. 9(2).	*	*	*	*	*
S. 145 inserted by No. 77/2004 s. 5, repealed by No. 19/2005 s. 9(2).	*	*	*	*	*

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**PART 8—SAVINGS AND TRANSITIONALS**

Pt 8 (Heading)  
amended by  
No. 70/1996  
s. 14(b).

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Ss 141–143  
repealed by  
No. 33/1994  
s. 27(3).

\* \* \* \* \*

S. 144  
amended by  
No. 34/1990  
s. 4(Sch. 3  
items 16–18),  
repealed by  
No. 33/1994  
s. 27(3).

\* \* \* \* \*

Ss 145–149  
repealed by  
No. 33/1994  
s. 27(3).

**150 Savings and transitionals**

- (1) Schedule 8 contains saving and transitional provisions.
- (2) The provisions contained in Schedule 8 are subject to any contrary intention appearing in the **Magistrates' Court (Consequential Amendments) Act 1989**.

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**SCHEDULES**

**SCHEDULE 1**

Section 10

**SALARIES AND ALLOWANCES OF MAGISTRATES**

**PART 1—MAGISTRATES**

Sch. 1 Pt 1  
cl. 1  
amended by  
Nos 64/1990  
s. 20(Sch.  
item  
4.3(a)(i)(ii)),  
22/1995  
s. 27(a)(i)(ii),  
4/2002  
s. 12(4)(a),  
substituted by  
No. 38/2004  
s. 14(1)(a).

1. The Chief Magistrate is entitled to be paid a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**.

Sch. 1 Pt 1  
cl. 2(a)  
amended by  
Nos 64/1990  
s. 20(Sch.  
item 4.3(b)(i)),  
22/1995  
s. 27(b)(i)(ii),  
4/2002  
s. 12(4)(a),  
31/2004  
s. 7(1)(a),  
substituted by  
No. 38/2004  
s. 14(1)(b).

2. A Deputy Chief Magistrate is entitled to be paid—
  - (a) a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**; or

(b) in the case of a part-time magistrate who is a Deputy Chief Magistrate, a pro-rata amount of the salary referred to in paragraph (a).

Sch. 1 Pt 1 cl. 2(b) repealed by No. 64/1990 s. 20(Sch. item 4.3(b)(ii)), new Sch. 1 Pt 1 cl. 2(b) inserted by No. 31/2004 s. 7(1)(b).

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Sch. 1 Pt 1 cl. 2(c) repealed by No. 64/1990 s. 20(Sch. item 4.3(b)(ii)).

3. A magistrate, not being the Chief Magistrate or a Deputy Chief Magistrate, is entitled to be paid—

(a) a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**; or

Sch. 1 Pt 1 cl. 3(a) amended by Nos 64/1990 s. 20(Sch. item 4.3(c)(i)), 22/1995 s. 27(c)(i)(ii), 4/2002 s. 12(4)(a), 31/2004 s. 7(2)(a), substituted by No. 38/2004 s. 14(1)(c).

(b) in the case of a part-time magistrate, a pro-rata amount of the salary referred to in paragraph (a).

Sch. 1 Pt 1 cl. 3(b) repealed by No. 64/1990 s. 20(Sch. item 4.3(c)(ii)), new Sch. 1 Pt 1 cl. 3(b) inserted by No. 31/2004 s. 7(2)(b).

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Sch. 1

Sch. 1 Pt 1  
cl. 3(c)  
repealed by  
No. 64/1990  
s. 20(Sch.  
item 4.3(c)(ii)).

\* \* \* \* \*

Sch. 1 Pt 1  
cl. 4  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.3(d)  
(i)-(iv)),  
substituted by  
No. 22/1995  
s. 27(d),  
amended by  
No. 4/2002  
s. 12(4)(b),  
substituted by  
No. 38/2004  
s. 14(1)(d).

4. The Chief Magistrate, each Deputy Chief Magistrate and each other magistrate shall be paid allowances at such rate or amount or of such kind as are for the time being applicable under the **Judicial Salaries Act 2004**.

Sch. 1 Pt 1  
cl. 5  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.3(e)  
(i)-(vii)),  
repealed by  
No. 22/1995  
s. 27(e),  
new Sch. 1  
Pt 1 cl. 5  
inserted by  
No. 83/2008  
s. 11(1).

5. A magistrate may by notice in writing to the Attorney-General enter into an arrangement under which the magistrate agrees to receive the whole or part of his or her total amount of future salary as a magistrate as non-salary benefits of an equivalent value.

Sch. 1 Pt 1  
cl. 6  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.3(f)),  
repealed by  
No. 22/1995  
s. 27(e),  
new Sch. 1  
Pt 1 cl. 6  
inserted by  
No. 83/2008  
s. 11(1).

6. The notice must specify a date from which the arrangement is to take effect which must be the date on which the notice is given or a later date.

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7. A magistrate may vary or revoke a notice he or she has given under clause 5 by notice in writing to the Attorney-General.
- Sch. 1 Pt 1  
cl. 7  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.3(f)),  
repealed by  
No. 22/1995  
s. 27(e)  
new Sch. 1  
Pt 1 cl. 7  
inserted by  
No. 83/2008  
s. 11(1).
8. The notice of variation or revocation must specify a date from which the variation or revocation is to take effect which must be the date on which the notice is given or a later date.
- Sch. 1 Pt 1  
cl. 8  
repealed by  
No. 22/1995  
s. 27(e),  
new Sch. 1  
Pt 1 cl. 8  
inserted by  
No. 83/2008  
s. 11(1).
9. Subject to clauses 2(b) and 3(b), nothing in this Part authorises the salaries or the aggregate value of the allowances payable to the Chief Magistrate, a Deputy Chief Magistrate and the other magistrates to be reduced.
- Sch. 1 Pt 1  
cl. 9  
amended by  
Nos 22/1995  
s. 27(f),  
31/2004  
s. 7(3).
- 9A. An arrangement referred to in clause 5 or 10A does not constitute and is deemed never to have constituted a reduction in the salary of the magistrate who enters or entered into the arrangement.
- Sch. 1 Pt 1  
cl. 9A  
inserted by  
No. 83/2008  
s. 11(2).
10. The following are to be paid out of the Consolidated Fund, which is appropriated to the necessary extent—
- Sch. 1 Pt 1  
cl. 10  
amended by  
Nos 64/1990  
s. 20(Sch.  
item 4.3(g)),  
22/1995  
s. 27(g),  
substituted by  
No. 1/2000  
s. 5(1).
- (a) the salaries (including the amount of any non-salary benefits) and allowances payable under this Part; and
- Sch. 1 Pt 1  
cl. 10(1)(a)  
amended by  
No. 83/2008  
s. 11(3).

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Sch. 1 Pt 1  
cl. 10(c)  
substituted by  
No. 26/2007  
s. 114(1).

- (b) premiums and other amounts payable under the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of the magistrates; and
- (c) superannuation contributions (within the meaning of the **Payroll Tax Act 2007**) payable in respect of the magistrates; and

Sch. 1 Pt 1  
cl. 10(d)  
substituted by  
No. 26/2007  
s. 114(1).

- (d) payroll tax payable under the **Payroll Tax Act 2007** payable in respect of wages paid or payable to the magistrates; and

- (e) tax payable under the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of fringe benefits provided to the magistrates.

Sch. 1 Pt 1  
cl. 10A  
inserted by  
No. 83/2008  
s. 11(4).

- 10A. If, before the commencement of section 11 the **Salaries Legislation Amendment (Salary Sacrifice) Act 2008** (the *2008 Act*), a magistrate entered into an arrangement under which the magistrate agreed to receive the whole or part of his or her total amount of salary as a magistrate as non-salary benefits of an equivalent value, that arrangement, by virtue of this clause, has and is deemed always to have had full effect according to its tenor as if it had been authorised under clause 5.

Sch. 1 Pt 1  
cl. 10B  
inserted by  
No. 83/2008  
s. 11(4).

- 10B. On and after the commencement of section 11 of the 2008 Act, an arrangement referred to in clause 10A may only be varied or revoked in accordance with clause 7.

Sch. 1 Pt 1  
cl. 10C  
inserted by  
No. 83/2008  
s. 11(4).

- 10C. In clause 5, *non-salary benefits* has the same meaning as it has in clause 3(5) of Schedule 1A to the **Public Administration Act 2004**.

**PART 2—ACTING MAGISTRATES**

11. Subject to clause 11A and clause 11B, an acting magistrate, while undertaking the duties of a magistrate, is entitled to be paid remuneration—
- (a) at the annual rate for the time being applicable under the **Judicial Salaries Act 2004** to the holder of that office on other than an acting basis, if the acting magistrate is required to undertake the duties of a magistrate on a full time basis; or
  - (b) at the rate per sitting day for the time being applicable under the **Judicial Salaries Act 2004** to the holder of that office, if the acting magistrate is required to undertake the duties of a magistrate on a sessional basis.
- 11A. If an acting magistrate, who is required to undertake the duties of a magistrate on a full time basis, is entitled to—
- (a) a non-contributory pension under a relevant Act within the meaning of section 16A of the **State Superannuation Act 1988**; or
  - (b) because he or she has held a public office in another jurisdiction, a non-contributory pension under any other law—
- the amount of pension to which the acting magistrate is entitled shall be deducted from the remuneration payable to that acting magistrate under clause 11(a).
- 11B. An acting magistrate who is required to undertake the duties of a magistrate on a sessional basis and is entitled to—
- (a) a non-contributory pension under a relevant Act within the meaning of section 16A of the **State Superannuation Act 1988**; or

Sch. 1 Pt 2  
cl. 11  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.3(g)),  
substituted by  
No. 1/2000  
s. 6,  
amended by  
No. 4/2002  
s. 12(4)(c),  
substituted by  
Nos 38/2004  
s. 14(2),  
3/2005 s. 12.

Sch. 1 Pt 2  
cl. 11A  
inserted by  
No. 3/2005  
s. 12.

Sch. 1 Pt 2  
cl. 11B  
inserted by  
No. 3/2005  
s. 12.

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(b) because he or she has held a public office in another jurisdiction, a non-contributory pension under any other law—

shall receive remuneration calculated in accordance with the following formula—

$$S - \left( \frac{P}{235} \right)$$

where—

"S" means the rate per sitting day for the time being applicable under the **Judicial Salaries Act 2004** to the acting magistrate;

"P" means the annual pension to which the acting magistrate is entitled that is referred to in paragraph (a) or (b).

Sch. 1 Pt 2  
cl. 11C  
inserted by  
No. 3/2005  
s. 12.

11C. Each acting magistrate shall be paid allowances at such rate or amount or of such kind as are for the time being applicable under the **Judicial Salaries Act 2004**.

Sch. 1 Pt 2  
cl. 11D  
inserted by  
No. 83/2008  
s. 12(1).

11D. An acting magistrate may by notice in writing to the Attorney-General enter into an arrangement under which the acting magistrate agrees to receive the whole or part of his or her total amount of future remuneration (whether or not payable at a sessional rate) as non-salary benefits of an equivalent value.

Sch. 1 Pt 2  
cl. 11E  
inserted by  
No. 83/2008  
s. 12(1).

11E. The notice must specify a date from which the arrangement is to take effect which must be the date on which the notice is given or a later date.

Sch. 1 Pt 2  
cl. 11F  
inserted by  
No. 83/2008  
s. 12(1).

11F. An acting magistrate may vary or revoke a notice he or she has given under clause 11D by notice in writing to the Attorney-General.

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- 11G. The notice of variation or revocation must specify a date from which the variation or revocation is to take effect which must be the date on which the notice is given or a later date.
12. The following are to be paid out of the Consolidated Fund, which is appropriated to the necessary extent—
- (a) the remuneration (including the amount of any non-salary benefits) payable under this Part; and
  - (b) premiums and other amounts payable under the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of acting magistrates; and
  - (c) superannuation contributions (within the meaning of the **Payroll Tax Act 2007**) payable in respect of acting magistrates; and
  - (d) payroll tax payable under the **Payroll Tax Act 2007** payable in respect of wages paid or payable to acting magistrates; and
  - (e) tax payable under the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of fringe benefits provided to acting magistrates.
13. If, before the commencement of section 12 of the **Salaries Legislation Amendment (Salary Sacrifice) Act 2008** (the *2008 Act*), an acting magistrate entered into an arrangement under which the acting magistrate agreed to receive the whole or part of his or her total amount of salary (whether or not payable at a sessional
- Sch. 1 Pt 2  
cl. 11G  
inserted by  
No. 83/2008  
s. 12(1).
- Sch. 1 Pt 2  
cl. 12  
amended by  
No. 64/1990  
s. 20(Sch.  
item 4.3(g)),  
substituted by  
No. 1/2000  
s. 5(2).
- Sch. 1 Pt 2  
cl. 12(a)  
amended by  
No. 83/2008  
s. 12(2).
- Sch. 1 Pt 2  
cl. 12(c)  
substituted by  
No. 26/2007  
s. 114(2).
- Sch. 1 Pt 2  
cl. 12(d)  
substituted by  
No. 26/2007  
s. 114(2).
- Sch. 1 Pt 2  
cl. 13  
inserted by  
No. 83/2008  
s. 12(3).

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rate) as an acting magistrate as non-salary benefits of an equivalent value, that arrangement, by virtue of this clause, has and is deemed always to have had full effect according to its tenor as if it had been authorised under clause 11D.

Sch. 1 Pt 2  
cl. 14  
inserted by  
No. 83/2008  
s. 12(3).

14. On and after the commencement of section 12 of the 2008 Act, an arrangement referred to in clause 13 may only be varied or revoked in accordance with clause 11F.

Sch. 1 Pt 2  
cl. 15  
inserted by  
No. 83/2008  
s. 12(3).

15. In clause 11D, *non-salary benefits* has the same meaning as it has in clause 3(5) of Schedule 1A to the **Public Administration Act 2004**.
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*	*	*	*	*	<b>Sch. 2</b> amended by Nos 34/1990 s. 4(Sch. 3 item 19), 12/1993 s. 5(b), 33/1994 s. 19, 64/1996 s. 39, 35/1999 s. 36(1), 35/2002 ss 20, 21, 12/2006 s. 175, 50/2006 s. 26, 36/2007 s. 5, 8/2008 s. 15, 52/2008 s. 255, repealed by No. 7/2009 s. 427(2) (as amended by No. 68/2009 s. 54(m)).
*	*	*	*	*	<b>Sch. 3</b> repealed by No. 33/1994 s. 27(4).
*	*	*	*	*	<b>Sch. 4</b> repealed. <sup>17</sup>
*	*	*	*	*	<b>Sch. 5</b> repealed. <sup>18,19</sup>

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Sch. 6  
amended by  
Nos 34/1990  
s. 4(Sch. 3  
item 23),  
35/1996  
s. 453(Sch. 1  
item 53.9),  
48/1997  
s. 66(3)(4),  
10/1999  
ss 13–15,  
48/2006  
s. 42(Sch.  
item 22.9),  
repealed by  
No. 7/2009  
s. 427(2) (as  
amended by  
No. 68/2009  
s. 54(m)).

\* \* \* \* \*

Sch. 7  
repealed.<sup>20,21</sup>

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**SCHEDULE 8**

Section 150

**SAVINGS AND TRANSITIONALS**

- 1 (1) The Magistrates' Court shall be deemed to be the same Court as the several Magistrates' Courts existing immediately before the commencement of Part 2 and no action, matter or thing shall be abated or affected by the change in the establishment or name of the Court.
  - (2) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a Magistrates' Court or to Magistrates' Courts is to be taken to refer to the Magistrates' Court.
  - (3) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a Magistrates' Court held at a particular place is to be taken to refer to the Magistrates' Court sitting at that place or, if the Magistrates' Court does not sit at that place, to the Court sitting at the place that is nearest to that place.
- 2 (1) Each person who holds office as a magistrate immediately before the commencement of Part 2 holds office as a magistrate under and subject to this Act on and from that commencement without any further appointment.
  - (2) Each person who holds office as Chief Magistrate or Deputy Chief Magistrate immediately before the commencement of Part 2 holds office as Chief Magistrate or Deputy Chief Magistrate (as the case requires) under and subject to this Act on and

from that commencement without any further appointment.

- (3) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a police magistrate or to a stipendiary magistrate is to be taken to refer to a magistrate.
- 3
- (1) Each person who holds office as a clerk of a Magistrates' Court immediately before the commencement of Part 3 holds office as a registrar of the Court under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
  - (2) Each person who holds office as a deputy clerk of a Magistrates' Court immediately before the commencement of Part 3 holds office as a deputy registrar of the Court under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
  - (3) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a clerk of a Magistrates' Court is to be taken to refer to a registrar of the Court.
  - (4) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a deputy clerk of a Magistrates' Court is to be taken to refer to a deputy registrar of the Court.
- 4
- Unless the context otherwise requires, any reference in any Act (other than this Act, the **Evidence Act 2008** or the **Evidence (Miscellaneous Provisions) Act 1958**) or in any subordinate instrument to a justice of the peace is to be taken to refer to a magistrate.

Sch. 8 cl. 4  
amended by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 34.11).

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- 5 If by any Act (other than this Act) or by any subordinate instrument a procedure is prescribed for or in relation to any proceeding in the Court or for or in relation to any step or process in such a proceeding and there is prescribed by this Act or the Rules a procedure that is applicable to such a proceeding or step or process, the procedure prescribed by this Act or the Rules applies despite the provisions of that Act or subordinate instrument.
  - 6 A civil proceeding in the Court must, despite anything in any Act or subordinate instrument, be commenced and conducted in accordance with the Rules and not otherwise.
  - 7 A criminal proceeding in the Court must, despite anything in any Act or subordinate instrument, be commenced and conducted in accordance with this Act and not otherwise.
  - 8 An order made by the Court in a civil proceeding (other than an order made under the **Imprisonment of Fraudulent Debtors Act 1958** or the **Judgment Debt Recovery Act 1984**) must be enforced in accordance with this Act and the Rules and not otherwise.
  - 9 If by or under any Act other than this Act any jurisdiction, power or authority is vested in a magistrate—
    - (a) that jurisdiction, power or authority may be exercised in accordance with this Act and the Rules by the Court in all respects as that magistrate might have done; and
    - (b) the Court constituted in accordance with this Act and the Rules has jurisdiction, power or authority co-ordinate with the jurisdiction, power or authority of the magistrate.

- 10 If by or under any Act other than this Act any jurisdiction, power or authority is vested in a Magistrates' Court or in any magistrate or justice of the peace by the use of the words "a Magistrates' Court", "a Magistrates' Court constituted by a magistrate", "a magistrate proceeding in chambers", "a magistrate" or "a justice" or by any words referring to a Magistrates' Court or to any magistrate or justice of the peace, that jurisdiction, power or authority may be exercised by the Court in accordance with this Act and the Rules.
- 11 Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a process, summons, warrant or other thing specified in column 1 of the Table is to be taken to refer to the process, summons, warrant or other thing specified opposite it in column 2 of the Table.

TABLE

<i>Column 1</i>	<i>Column 2</i>
Information	Charge
Preliminary examination	Committal proceeding
Warrant to apprehend	Warrant to arrest
Warrant to search	Search warrant
Warrant of distress	Warrant to seize property
Warrant of commitment	Warrant to imprison, warrant to detain in a youth training centre or remand warrant, whichever is appropriate

- 12 (1) The **Magistrates' Courts Act 1971** and the **Magistrates (Summary Proceedings) Act 1975** continue, despite their repeal and despite any rule of law to the contrary, to apply to—
- (a) any action or matter pending in a Magistrates' Court immediately before the commencement of Part 2 unless at that commencement—

- 
- (i) the hearing of that action or matter had not commenced; or
  - (ii) no evidence had been given on the hearing of that action or matter; and
- (b) any re-hearing or review of, or appeal from, any action or matter—
- (i) that was concluded before the commencement of Part 2; or
  - (ii) to which, by virtue of paragraph (a), the **Magistrates' Courts Act 1971** and the **Magistrates (Summary Proceedings) Act 1975** continue to apply; and
- (c) the enforcement of any order made in any action or matter referred to in paragraph (b).
- (2) Part VIIA of the **Magistrates (Summary Proceedings) Act 1975** continues, despite its repeal, to apply to enforcement orders made under that Part before the commencement of section 99 of this Act.
- (3) Section 168 of the **Magistrates (Summary Proceedings) Act 1975** continues, despite its repeal, to apply in relation to a proceeding for an offence if, at the commencement of section 130, the hearing of that proceeding had commenced.
- (4) Subclause (1) applies except as otherwise expressly provided by the Rules with respect to civil proceedings.
- 13 All fines imposed before the commencement of section 97 and not recovered before that commencement may be recovered in all respects as if this Act had not been passed.

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Sch. 8 cl. 14 inserted by No. 49/1990 s. 3, repealed by No. 10/1999 s. 8(4).	*	*	*	*	*	
Sch. 8 cl. 15 inserted by No. 23/1991 s. 10, repealed by No. 10/1999 s. 8(4).	*	*	*	*	*	
Sch. 8 cl. 16 inserted by No. 44/1997 s. 31.						16 The amendment of section 58(1)(b) made by section 29 of the <b>Law and Justice Legislation Amendment Act 1997</b> applies to warrants issued before as well as after the commencement of section 29 of that Act.
Sch. 8 cl. 17 inserted by No. 44/1997 s. 31.						17 The amendment of Schedule 7 made by section 30(2) of the <b>Law and Justice Legislation Amendment Act 1997</b> applies to warrants issued before as well as after the commencement of section 30(2) of that Act.
Sch. 8 cl. 18 inserted by No. 81/1997 s. 13, repealed by No. 10/1999 s. 8(4).	*	*	*	*	*	
Sch. 8 cl. 19 inserted by No. 10/1999 s. 24(3).						19 The amendments of section 126 of this Act made by section 24(1) and (2) of the <b>Magistrates' Court (Amendment) Act 1999</b> apply to proceedings, whether commenced before or after the commencement of that section of that Act.
Sch. 8 cl. 20 inserted by No. 10/1999 s. 7.						20 (1) Schedule 5, as substituted by section 4 of the <b>Magistrates' Court (Amendment) Act 1999</b> applies only with respect to the hearing of charges filed after the commencement of that section.  (2) Schedule 5, as in force immediately before the commencement of section 4 of the <b>Magistrates' Court (Amendment) Act 1999</b> , continues to

apply, despite its repeal, with respect to the hearing of charges filed before that commencement.

- (3) Any amendment of this Act made by a provision of Part 2 of the **Magistrates' Court (Amendment) Act 1999** does not alter the nature of a committal proceeding from that existing immediately before the commencement of that provision.
- 21 (1) The amendments of this Act made by sections 9, 13 and 14 of the **Magistrates' Court (Amendment) Act 1999** apply only with respect to appeals to the County Court where notice of appeal is given on or after 1 July 1999. Sch. 8 cl. 21  
inserted by  
No. 10/1999  
s. 16.
- (2) The repeal of section 87 effected by section 10 of the **Magistrates' Court (Amendment) Act 1999** does not affect an appeal to the County Court where the notice of appeal was given before 1 July 1999.
- (3) Section 88AA, as inserted by section 11 of the **Magistrates' Court (Amendment) Act 1999**, applies only with respect to appeals to the County Court where notice of appeal is given on or after 1 July 1999.
- 22 (1) The amendments of sections 34 and 35 of this Act made by section 4 of the **Magistrates' Court (Committal Proceedings) Act 2000** apply only with respect to summonses issued on or after the commencement of that section of that Act. Sch. 8 cl. 22  
inserted by  
No. 92/2000  
s. 10.
- (2) The amendments of section 56A of this Act made by section 6 of the **Magistrates' Court (Committal Proceedings) Act 2000** apply only with respect to applications made under section 56A(1), and to proceedings held under orders made on such applications, on or after the commencement of that section of that Act.

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- (3) Subject to subclauses (4) to (8), an amendment of Schedule 5 to this Act made by a provision of Part 2 of the **Magistrates' Court (Committal Proceedings) Act 2000** applies only with respect to the hearing of charges filed in the Court on or after the commencement of that provision.
  - (4) If a defendant has given a notice under clause 12(1)(a) of Schedule 5 to this Act before the commencement of section 7(9) of the **Magistrates' Court (Committal Proceedings) Act 2000** but an application for leave to cross-examine the witness has not been made before that commencement, the notice has effect on and after that commencement as if it were a notice given in accordance with that clause as amended by that Act and the application for leave shall be made and determined in accordance with Schedule 5 to this Act as amended by that Act.
  - (5) If an application for leave to cross-examine a witness at a committal proceeding has been refused before the commencement of section 7(9) of the **Magistrates' Court (Committal Proceedings) Act 2000** but the committal proceeding has not been held before that commencement, the Court may, on the application of the defendant, grant leave to the defendant to give a fresh notice under clause 12(1)(a) of Schedule 5 to this Act as amended by that Act if satisfied that it is in the interests of justice to do so.
  - (6) Subject to subclause (5), a notice that the defendant intends to seek leave to cross-examine a witness at a committal proceeding may be given, and an application for leave to cross-examine a witness at a committal proceeding may be made, on or after the commencement of section 7(9) of the **Magistrates' Court (Committal Proceedings) Act 2000** in accordance with

Schedule 5 to this Act as amended by that Act, irrespective of when the charge to which the proceeding relates was filed in the Court.

- (7) If leave to cross-examine a witness to whom clause 13 of Schedule 5 to this Act applies has been granted before the commencement of section 8 of the **Magistrates' Court (Committal Proceedings) Act 2000** but the cross-examination has not commenced before that commencement, the amendment of that Schedule made by that section applies with respect to the cross-examination.
- (8) Clause 24A of Schedule 5 to this Act, as inserted by section 9 of the **Magistrates' Court (Committal Proceedings) Act 2000** applies irrespective of when the defendant was committed for trial.

23 Any amendment of this Act made by the Magistrates' Court (Infringements) Act 2000 applies to infringement notices, enforcement orders, warrants and custodial community permits issued before as well as after the commencement of that Act.

Sch. 8 cl. 23 inserted by No. 99/2000 s. 14 (as amended by No. 12/2001 s. 11).

24 If the operation of clause 23 would result in an enforcement order expiring before the date section 11 of the **Magistrates' Court (Infringements) Act 2000** came into operation, the order expires on that date.

Sch. 8 cl. 24 inserted by No. 99/2000 s. 14 (as amended by No. 12/2001 s. 11).

25 Despite clauses 23 and 24, if an application to have an application for the revocation of an enforcement order referred to the Court under clause 10(6) of Schedule 7 was pending immediately before section 11 of the **Magistrates' Court (Infringements) Act 2000** came into operation, the order remains in force until the registrar refuses the application for referral or, if the referral is made, until the Court revokes or refuses to revoke the order.

Sch. 8 cl. 25 inserted by No. 99/2000 s. 14 (as amended by No. 12/2001 s. 11).

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Sch. 8 cl. 25  
inserted by  
No. 61/2001  
s. 12(2),  
re-numbered  
as Sch. 8  
cl. 26 by  
No. 35/2002  
s. 24(a).

26 The amendment of item 49 in Schedule 4 to this Act made by the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** applies to offences alleged to have been committed before as well as after the commencement of that Act.

Sch. 8 cl. 27  
inserted by  
No. 35/2002  
s. 24(b).

27 (1) The amendments made to this Act by sections 12, 13, 14, 15, 19 and 20 of the **Criminal Justice Legislation (Miscellaneous Amendments) Act 2002** apply to a criminal proceeding commenced on or after the commencement of that Act.

(2) Section 128A as inserted by section 17 of the **Criminal Justice Legislation (Miscellaneous Amendments) Act 2002** applies to a criminal proceeding for an offence, whether commenced before or after the commencement of section 17 of that Act.

Sch. 8 cl. 28  
inserted by  
No. 27/2002  
s. 9.

28 The amendments of this Act made by section 6 of the **Magistrates' Court (Koori Court) Act 2002** apply with respect to a proceeding for an offence, irrespective of when the offence was committed or the proceeding commenced.

Sch. 8 cl. 29  
inserted by  
No. 39/2003  
s. 10.

29 The amendments made to this Act by section 6 of the **Courts Legislation (Amendment) Act 2003** apply with respect to a proceeding for an offence, whether the offence is alleged to have been committed before or after the commencement of that section.

Sch. 8 cl. 30  
inserted by  
No. 31/2004  
s. 8.

30 A person is eligible for appointment as a magistrate under section 7 if the person was, immediately before the commencement of section 4(2) of the **Courts Legislation (Judicial Appointments) Act 2004**, eligible for appointment under section 7(3)(b) as then in force.

- 
- 31 The amendments made to this Act by sections 3 and 4 of the **Magistrates' Court (Increased Civil Jurisdiction) Act 2004** apply only with respect to proceedings commenced on or after the commencement of that Act. **Sch. 8 cl. 31 inserted by No. 68/2004 s. 5.**
- 31A The amendment made to this Act by section 11 of the **Sentencing (Further Amendment) Act 2005** applies to a proceeding for an offence commenced on or after the commencement of that section, regardless of when the offence is alleged to have been committed. **Sch. 8 cl. 31A inserted by No. 15/2005 s. 12.**
- 32 The substitution of section 9 of this Act made by section 11 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005** does not affect an appointment made under section 9 as in force immediately before the commencement of section 11 of that Act and a magistrate who has been so appointed and who holds the office of acting magistrate immediately before that commencement continues in that office subject to section 9 as if section 9 had not been substituted. **Sch. 8 cl. 32 inserted by No. 3/2005 s. 13.**
- 33 The substitution of clause 11 in Part 2 of Schedule 1 to this Act made by section 12 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005** does not affect the remuneration of an acting magistrate applicable immediately before the commencement of section 12 of that Act and an acting magistrate who receives remuneration under clause 11 immediately before that commencement continues to receive remuneration during the period of his or her appointment as if clause 11 had not been substituted. **Sch. 8 cl. 33 inserted by No. 3/2005 s. 13.**
- 34 (1) Subject to subclauses (2) and (3), the amendments of section 140 of this Act made by section 8 of the **Magistrates' Court (Judicial Registrars and Court Rules) Act 2005** do not affect the operation of any regulations made under that section of this Act. **Sch. 8 cl. 34 inserted by No. 19/2005 s. 10.**

- (2) If, but for subclause (1), a provision of the regulations made under section 140 would cease to have effect because of the repeal of the power conferred by that section to make the provision, the provision continues in operation until it is revoked or the first anniversary of the commencement of section 8 of the **Magistrates' Court (Judicial Registrars and Court Rules) Act 2005** (whichever first occurs).
- (3) A provision of the regulations made under section 140 is of no force or effect to the extent that it deals with a matter dealt with by a rule made under section 16(1A).
- (4) Despite the amendments of section 140 of this Act made by section 8 of the **Magistrates' Court (Judicial Registrars and Court Rules) Act 2005** and without limiting any other power to make regulations conferred by this Act, the Governor in Council may, until the first anniversary of the commencement of section 8 of the **Magistrates' Court (Judicial Registrars and Court Rules) Act 2005**, make regulations under that section revoking any provision of the regulations made under a power conferred by that section that is repealed by those amendments.

### **35 Savings provisions—instalment arrangements and payment plans**

- (1) Despite the amendment of Schedule 7 by section 28 of the **Investigative, Enforcement and Police Powers Acts (Amendment) Act 2005**—
  - (a) any instalment arrangement of a kind referred to in clause 3(2A) of Schedule 7 in force immediately before the commencement of section 28 of that Act continues to have effect and may be enforced in accordance with Schedule 7 as in force immediately

Sch. 8 cl. 35  
inserted by  
No. 87/2005  
s. 33.

- before that commencement as if those amendments had not been made; and
- (b) any certificate under clause 4(2) of Schedule 7 provided to a registrar under clause 4(1) of that Schedule which certifies as to a matter referred to in clause 4(2)(da) as in force immediately before the commencement of section 28 of that Act—
- (i) continues to have effect as if those amendments had not been made; and
  - (ii) is a valid certificate for the purposes of enforcement under Schedule 7 of the infringement penalty and any prescribed costs to which that certificate relates; and
- (c) clause 3A of Schedule 7 as in force immediately before the commencement of section 28 of that Act continues to have effect in respect of any instalment arrangement to which that clause applied immediately before that commencement as if clause 3A had not been amended by that Act.
- (2) Nothing in this clause prevents an instalment arrangement of a kind referred to in clause 3(2A) of Schedule 7 in force immediately before the commencement of section 28 of the **Investigative, Enforcement and Police Powers Acts (Amendment) Act 2005** being cancelled or revoked and a payment plan under Part 5 of Schedule 7 being offered and accepted in respect of any infringement penalty and prescribed costs to which that instalment arrangement applied.

35A An amendment made to this Act by a provision of section 40 or 41 of the **Crimes (Sexual Offences) Act 2006** applies only to a criminal proceeding commenced on or after the commencement of that provision.

Sch. 8 cl. 35A  
inserted by  
No. 2/2006  
s. 41A (as  
amended by  
No. 76/2006  
s. 13).

### 36 Validation of service of certain documents under Schedule 7

- (1) Despite anything to the contrary in section 49(1) of the **Interpretation of Legislation Act 1984**, if under or for the purposes of Part 2 of Schedule 7 to this Act as in force immediately before its repeal by section 176(2) of the **Infringements Act 2006**, any document had been served on a person by post to an authorised address and that document had been returned undelivered to its sender, that document—
  - (a) must be taken to have been validly served on the day that is 14 days after the date specified in the document as the date of that document, despite it being returned to its sender as undelivered; and
  - (b) any enforcement action taken under that Schedule must be taken to be a valid action under that Schedule.
- (2) For the purposes of this section, *authorised address* means—
  - (a) an address recorded in relation to a person in a register kept by a public statutory body (including, in relation to a director, alternate director or secretary of a company within the meaning of the Corporations Act, the Australian Securities and Investments Commission) if by law that person or another person is required to notify that public statutory body of any change in that address;
  - (b) in relation to any document in respect of a transport infringement within the meaning of the **Transport Act 1983** or a ticket infringement within the meaning of that Act, an address provided by a person to an authorised officer or police member under

section 218B of that Act after that officer or that member has requested the person to state his or her name and address because the officer or member believes on reasonable grounds that the person has committed a transport infringement or a ticket infringement, as the case requires.

- 37 (1) The amendments made to this Act by sections 15, 19, 20, 22, 25 to 28 and 31 to 34 of the Courts Legislation (Jurisdiction) Act 2006 apply with respect to a proceeding for an offence, irrespective of when the offence is alleged to have been committed or when the proceeding commenced.
- (2) An amendment made to this Act by a provision of section 16, 17, 18, 21(1), 23, 24, 29 or 30 of the **Courts Legislation (Jurisdiction) Act 2006** apply only with respect to proceedings commenced on or after the commencement of that provision.
- (3) The amendment made to this Act by section 21(2) of the **Courts Legislation (Jurisdiction) Act 2006** applies only to the sentencing of a person for an offence on or after the commencement of that section, irrespective of when the offence was committed or the finding of guilt was made.
- 38 A notice by the Minister published in the Government Gazette under section 4B or 4C of this Act before the commencement of section 4 of the **Magistrates' Court and Coroners Acts Amendment Act 2007** and in force immediately before that commencement is not affected by the substitution for those sections of a new section 4B effected by that section 4 and the notice continues to have effect as if it were a notice published under the new section 4B(1)(b).

Sch. 8 cl. 37  
inserted by  
No. 50/2006  
s. 35.

Sch. 8 cl. 38  
inserted by  
No. 36/2007  
s. 7.

Sch. 8

- Sch. 8 cl. 39 inserted by No. 8/2008 s. 20.
- Sch. 8 cl. 40 inserted by No. 8/2008 s. 20.
- Sch. 8 cl. 41 inserted by No. 8/2008 s. 20.
- Sch. 8 cl. 42 inserted by No. 69/2009 s. 54(Sch. Pt 1 item 34.12).
- Sch. 8 cl. 43 inserted by No. 68/2009 s. 97(Sch. item 82.59).
- Sch. 8 cl. 44 inserted by No. 68/2009 s. 97(Sch. item 82.59).
- 39 Section 50A as inserted by section 5 of the **Criminal Procedure Legislation Amendment Act 2008** applies with respect to a proceeding for an offence, irrespective of when the offence was committed or the proceeding commenced.
- 40 Clause 3A of Schedule 2 as inserted by section 15 of the **Criminal Procedure Legislation Amendment Act 2008** applies to a contest mention hearing conducted on or after the commencement of section 15 of that Act.
- 41 The amendment of this Act by section 16 of the **Criminal Procedure Legislation Amendment Act 2008** applies with respect to a defendant committed for trial on or after the commencement of section 16 of that Act.
- 42 This Act, as in force immediately before the commencement of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, continues to apply to a hearing that commenced before the day that Act commenced and that—
- (a) continued on or after that day; or
  - (b) was adjourned until that day or a day after that day.
- 43 The amendment of this Act by section 426 of the **Criminal Procedure Act 2009** applies to a committal proceeding if the relevant criminal proceeding commenced on or after the commencement of section 426 of that Act.
- 44 (1) Section 118 as amended by section 435(1) of the **Criminal Procedure Act 2009** applies to an offence alleged to have been committed on or after the commencement of section 435(1) of that Act.
- (2) For the purposes of subclause (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of section 435(1) of the **Criminal**

**Procedure Act 2009**, the offence is alleged to have been committed before that commencement.

**45 Transitional provision—Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010**

Sch. 8 cl. 45  
inserted by  
No. 12/2010  
s. 7.

The amendments made to this Act by section 5 of the **Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010** apply to any proceeding, irrespective of when the offence to which the proceeding relates was committed or when the proceeding commenced, but does not apply to a proceeding in respect of an accused which was listed before the Court before the commencement of that section.

**46 Transitional provisions—Bail Amendment Act 2010**

Sch. 8 cl. 46  
inserted by  
No. 70/2010  
s. 35.

- (1) On the commencement of section 29 of the **Bail Amendment Act 2010**, a bail justice holding office immediately before that commencement (other than a bail justice referred to in section 121 of this Act) is deemed to be a bail justice appointed under section 120A of this Act whose term of office expires—
- (a) in the case of a bail justice appointed before 1 January 1991, 1 year after the commencement of section 29 of that Act or on the bail justice attaining the age of 70 years, whichever first occurs;
  - (b) in the case of a bail justice appointed on or after 1 January 1991 and before 1 January 2000, 2 years after the commencement of section 29 of that Act or on the bail justice attaining the age of 70 years, whichever first occurs;

- (c) in the case of a bail justice appointed on or after 1 January 2000 and before the commencement of section 29 of that Act, 3 years after the commencement of section 29 of that Act or on the bail justice attaining the age of 70 years, whichever first occurs.
- (2) On the commencement of section 29 of the **Bail Amendment Act 2010**—
- (a) an application for appointment as a bail justice that has been made but not determined before that commencement is to be taken to be an application made under section 120B of this Act; and
- (b) the applicant's completion before that commencement of the whole or part of a course of training that is subsequently prescribed for the purposes of section 120A(2)(e) may be relied on for the purposes of the application.
- (3) Section 121 as amended by section 30 of the **Bail Amendment Act 2010** applies to a person who commences to hold a prescribed office within the meaning of section 121 on or after the commencement of section 30 of that Act.
- (4) Section 122 as in force immediately before the commencement of section 31 of the **Bail Amendment Act 2010** continues to apply to any proceeding under section 122 existing immediately before the commencement of section 31 of that Act.
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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 23 March 1989*

*Legislative Council: 26 May 1989*

The long title for the Bill for this Act was "A Bill to establish the Magistrates' Court of Victoria, to provide for the constitution, jurisdiction and proceedings of that Court, to repeal the **Magistrates' Courts Act 1971** and the **Magistrates (Summary Proceedings) Act 1975**, to amend the **Bail Act 1977**, the **Crimes Act 1958**, the **Evidence Act 1958**, the **Interpretation of Legislation Act 1984** and certain other Acts and for other purposes."

The **Magistrates' Court Act 1989** was assented to on 14 June 1989 and came into operation as follows:

Section 16(4) on 15 June 1989: Special Gazette (No. 32) 15 June 1989 page 1; sections 16(5), 52, 141(3)(a)–(f) on 1 September 1989: Government Gazette 30 August 1989 page 2210; rest of Act on 1 September 1990: Government Gazette 25 July 1990 page 2216.

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## 2. Table of Amendments

This Version incorporates amendments made to the **Magistrates' Court Act 1989** by Acts and subordinate instruments.

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**Dangerous Goods (Amendment) Act 1989, No. 48/1989** (as amended by No. 34/1990)

*Assent Date:* 14.6.89  
*Commencement Date:* 28.6.89: Government Gazette 28.6.89 p. 1558  
*Current State:* All of Act in operation

**Second-Hand Dealers and Pawnbrokers Act 1989, No. 54/1989** (as amended by No. 34/1990)

*Assent Date:* 14.6.89  
*Commencement Date:* S. 35(5) on 10.9.90: Government Gazette 5.9.90 p. 2680  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Children and Young Persons Act 1989, No. 56/1989** (as amended by No. 93/1990)

*Assent Date:* 14.6.89  
*Commencement Date:* S. 286(Sch. 2 items 11.1, 11.2) on 23.9.91: Government Gazette 28.8.91 p. 2368  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Road Safety (Amendment) Act 1990, No. 5/1990**

*Assent Date:* 3.4.90  
*Commencement Date:* S. 20(4)(a)(b) on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Occupational Health and Safety (Miscellaneous Amendment) Act 1990, No. 11/1990** (as amended by No. 34/1990)

*Assent Date:* 24.4.90  
*Commencement Date:* 1.9.90: Government Gazette 15.8.90 p. 2473  
*Current State:* All of Act in operation

**Courts (Children's and Magistrates') Act 1990, No. 34/1990**

*Assent Date:* 13.6.90  
*Commencement Date:* S. 4(Sch. 3 items 1–25) on 1.9.90: Government Gazette 25.7.90 p. 2216  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Magistrates' Court (Amendment) Act 1990, No. 49/1990**

*Assent Date:* 28.9.90  
*Commencement Date:* Ss 1, 2, 5 on 28.9.90: s. 2(1); ss 3, 4 on 1.9.90: s. 2(2)  
*Current State:* All of Act in operation

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**Courts (Amendment) Act 1990, No. 64/1990**

*Assent Date:* 20.11.90  
*Commencement Date:* Ss 16, 20(Sch. items 4.1–4.5) on 1.1.91: Government Gazette 19.12.90 p. 3750  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Crimes (Sexual Offences) Act 1991, No. 8/1991**

*Assent Date:* 16.4.91  
*Commencement Date:* Ss 12–14, 16(1)(a)(c)(e)(f)(2) on 5.8.91: Government Gazette 24.7.91 p. 2026; ss 15, 16(1)(b)(d) on 20.12.94: Government Gazette 15.12.94 p. 3308  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Crimes Legislation (Miscellaneous Amendments) Act 1991, No. 23/1991**

*Assent Date:* 31.5.91  
*Commencement Date:* 31.5.91: s. 2.  
*Current State:* All of Act in operation

**Courts (Case Transfer) Act 1991, No. 43/1991**

*Assent Date:* 18.6.91  
*Commencement Date:* S. 38 on 1.10.91: Government Gazette 17.7.91 p. 1930  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Pollution of Waters by Oil and Noxious Substances (Amendment) Act 1991, No. 46/1991**

*Assent Date:* 25.6.91  
*Commencement Date:* 1.3.92: Government Gazette 19.2.92 p. 378  
*Current State:* All of Act in operation

**Sentencing Act 1991, No. 49/1991**

*Assent Date:* 25.6.91  
*Commencement Date:* 22.4.92: Government Gazette 15.4.92 p. 898  
*Current State:* All of Act in operation

**Crimes (Rape) Act 1991, No. 81/1991**

*Assent Date:* 3.12.91  
*Commencement Date:* S. 10(Sch. items 2.1, 2.2) on 1.1.92: Government Gazette 18.12.91 p. 3486  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Crimes (Confiscation of Profits) (Amendment) Act 1991, No. 90/1991**

*Assent Date:* 10.12.91  
*Commencement Date:* S. 35 on 1.9.92: Government Gazette 12.8.92 p. 2179  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Children and Young Persons (Amendment) Act 1992, No. 69/1992**

*Assent Date:* 24.11.92  
*Commencement Date:* S. 35 on 22.2.93: Government Gazette 28.1.93 p. 2179  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Employee Relations Act 1992, No. 83/1992**

*Assent Date:* 24.11.92  
*Commencement Date:* S. 181 on 4.1.93: Special Gazette (No. 63) 27.11.92 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 11.5.93  
*Commencement Date:* 11.5.93: s. 2  
*Current State:* All of Act in operation

**Historic Shipwrecks (Amendment) Act 1993, No. 67/1993**

*Assent Date:* 21.9.93  
*Commencement Date:* 21.9.93: s. 2  
*Current State:* All of Act in operation

**Summary Offences (Stolen Cattle) Act 1993, No. 71/1993**

*Assent Date:* 5.10.93  
*Commencement Date:* 5.10.93: s. 2  
*Current State:* All of Act in operation

**Crimes (Amendment) Act 1993, No. 129/1993**

*Assent Date:* 14.12.93  
*Commencement Date:* S. 9(3) on 1.6.94: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Financial Management Act 1994, No. 18/1994**

*Assent Date:* 10.5.94  
*Commencement Date:* Pt 1 (ss 1–8), ss 60, 61 on 10.5.94: s. 2(1); rest of Act on 1.7.94: s. 2(2)  
*Current State:* All of Act in operation

**Equipment (Public Safety) Act 1994, No. 21/1994**

*Assent Date:* 17.5.94  
*Commencement Date:* S. 39 on 1.12.94: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Magistrates' Court (Amendment) Act 1994, No. 33/1994**

*Assent Date:* 31.5.94  
*Commencement Date:* Ss 1, 2 on 31.5.94: s. 2(1); s. 27(5) on 14.12.93: s. 2(2); ss 3–27(4), 28 on 24.10.94: Government Gazette 20.10.94 p. 2789  
*Current State:* All of Act in operation

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**Public Prosecutions Act 1994, No. 43/1994**

*Assent Date:* 7.6.94  
*Commencement Date:* Ss 1–3 on 7.6.94: s. 2(1); rest of Act on 1.7.94: s. 2(3)  
*Current State:* All of Act in operation

**Valuation of Land (Amendment) Act 1994, No. 91/1994**

*Assent Date:* 6.12.94  
*Commencement Date:* S. 36(7) on 1.1.95: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Prostitution Control Act 1994, No. 102/1994**

*Assent Date:* 13.12.94  
*Commencement Date:* Ss 1, 2 on 13.12.94: s. 2(1); rest of Act on 13.6.95: s. 2(3)  
*Current State:* All of Act in operation

**Constitution (Court of Appeal) Act 1994, No. 109/1994**

*Assent Date:* 20.12.94  
*Commencement Date:* Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1  
*Current State:* All of Act in operation

**Courts (General Amendment) Act 1995, No. 9/1995**

*Assent Date:* 26.4.95  
*Commencement Date:* Ss 10, 11(3) on 27.4.95: Government Gazette 27.4.95 p. 973  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Judicial Remuneration Tribunal Act 1995, No. 22/1995**

*Assent Date:* 16.5.95  
*Commencement Date:* S. 27 on 28.9.95: Government Gazette 28.9.95 p. 2731  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Equal Opportunity Act 1995, No. 42/1995**

*Assent Date:* 14.6.95  
*Commencement Date:* S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 24 on 1.1.96: Government Gazette 21.12.95 p. 3571  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Infertility Treatment Act 1995, No. 63/1995**

*Assent Date:* 27.6.95  
*Commencement Date:* S. 169 on 1.1.98: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Heritage Act 1995, No. 93/1995**

*Assent Date:* 5.12.95  
*Commencement Date:* S. 218(1)(Sch. 2 item 4) on 23.5.96: Government Gazette 23.5.96 p. 1248  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Miscellaneous Acts (Health and Justice) Amendment Act 1995, No. 99/1995**  
(as amended by No. 73/1996)

*Assent Date:* 5.12.95  
*Commencement Date:* 5.12.95  
*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 items 53.1–53.9) on 1.1.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Corrections (Amendment) Act 1996, No. 45/1996**

*Assent Date:* 26.11.96  
*Commencement Date:* S. 18(Sch. 2 items 9.1–9.4) on 6.2.97: Government Gazette 6.2.97 p. 257  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts and Tribunals (General Amendment) Act 1996, No. 64/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* Ss 24–40 on 1.4.97: Government Gazette 20.3.97 p. 619  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Firearms Act 1996, No. 66/1996** (as amended by No. 26/1997)

*Assent Date:* 17.12.96  
*Commencement Date:* S. 201(3) on 31.1.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Magistrates' Court (Amendment) Act 1996, No. 70/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* Ss 4, 5(1), 8 on 1.9.90: s. 3(2); ss 6, 7, 9–12 on 14.11.96: s. 3(3); ss 1, 2, 3, 5(2)–(5), 13, 14 on 17.12.96: s. 3(1)  
*Current State:* All of Act in operation

**Miscellaneous Acts (Further Omnibus Amendments) Act 1996, No. 73/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* S. 61 on 17.12.96: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Evidence (Audio Visual and Audio Linking) Act 1997, No. 4/1997**

*Assent Date:* 22.4.97  
*Commencement Date:* Ss 7, 8 on 22.12.97: Government Gazette 18.12.97 p. 3612  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Police and Corrections (Amendment) Act 1997, No. 26/1997**

*Assent Date:* 20.5.97  
*Commencement Date:* S. 55 on 2.10.97: Government Gazette 2.10.97 p. 2731  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Law and Justice Legislation Amendment Act 1997, No. 44/1997**

*Assent Date:* 11.6.97  
*Commencement Date:* Ss 27–31 on 11.6.97: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997**

*Assent Date:* 11.6.97  
*Commencement Date:* Pt 7 (ss 64, 65, 66(2)–(4)) on 1.9.97: s. 2(2); s. 66(1) on 1.7.98: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Sentencing (Amendment) Act 1997, No. 69/1997**

*Assent Date:* 18.11.97  
*Commencement Date:* Ss 26–29 on 18.11.97: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Crimes (Amendment) Act 1997, No. 81/1997**

*Assent Date:* 2.12.97  
*Commencement Date:* Ss 12, 13 on 1.1.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 2.12.97  
*Commencement Date:* S. 52 on 1.8.98: s. 2(8)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Accident Compensation (Miscellaneous Amendment) Act 1997, No. 107/1997**

*Assent Date:* 23.12.97  
*Commencement Date:* S. 75 on 23.12.97: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Confiscation Act 1997, No. 108/1997**

*Assent Date:* 23.12.97  
*Commencement Date:* S. 154 on 1.7.98: Government Gazette 25.6.98 p. 1561  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Health Services (Amendment) Act 1998, No. 13/1998**

*Assent Date:* 28.4.98  
*Commencement Date:* 28.4.98: s. 2  
*Current State:* All of Act in operation

**State Trustees (Amendment) Act 1998, No. 15/1998**

*Assent Date:* 28.4.98  
*Commencement Date:* S. 9 on 1.8.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Miscellaneous Acts (Omnibus No. 1) Act 1998, No. 43/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* Ss 45, 46 on 26.5.98: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**  
(as amended by No. 12/1999)

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1998, No. 60/1998**

*Assent Date:* 27.10.98  
*Commencement Date:* S. 17 on 1.1.99: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Melbourne City Link (Amendment) Act 1998, No. 102/1998**

*Assent Date:* 1.12.98  
*Commencement Date:* S. 44 on 1.12.98: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 11.5.99  
*Commencement Date:* Ss 21–24, 31(1)(2) on 11.5.99: s. 2(1); ss 4–7, 8(1)–(4), 9–16 on 1.7.99: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Superannuation Acts (Further Amendment) Act 1999, No. 13/1999**

*Assent Date:* 11.5.99  
*Commencement Date:* Ss 5, 6 on 7.5.96: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 8.6.99  
*Commencement Date:* S. 36 on 1.9.99: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Electricity Industry Acts (Further Amendment) Act 1999, No. 36/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 26 on 8.6.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Gas Industry Acts (Further Amendment) Act 1999, No. 39/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 39 on 8.6.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Prostitution Control (Amendment) Act 1999, No. 44/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 34 on 8.6.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts and Tribunals Legislation (Amendment) Act 2000, No. 1/2000**

*Assent Date:* 28.3.00  
*Commencement Date:* S. 6 on 29.3.00: s. 2(1); s. 5 on 1.7.00: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Environment Protection (Enforcement and Penalties) Act 2000, No. 49/2000**

*Assent Date:* 14.6.00  
*Commencement Date:* S. 4 on 9.7.00: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts and Tribunals Legislation (Further Amendment) Act 2000, No. 51/2000**

*Assent Date:* 5.9.00  
*Commencement Date:* Ss 4, 7–9 on 6.9.00: s. 2(1); ss 5, 6 on 1.1.01: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Juries Act 2000, No. 53/2000**

*Assent Date:* 12.9.00  
*Commencement Date:* S. 97 on 1.8.01: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Electricity Industry Legislation (Miscellaneous Amendments) Act 2000,  
No. 69/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 57 on 1.1.01: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 75) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 5.12.00  
*Commencement Date:* Ss 4–10 on 1.7.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Information Privacy Act 2000, No. 98/2000**

*Assent Date:* 12.12.00  
*Commencement Date:* S. 75 on 1.9.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Magistrates' Court (Infringements) Act 2000, No. 99/2000** (as amended by  
No. 12/2001)

*Assent Date:* 12.12.00  
*Commencement Date:* Ss 3–14 on 1.7.01: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Health Records Act 2001, No. 2/2001**

*Assent Date:* 10.4.01  
*Commencement Date:* S. 110 on 1.7.02: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 44) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Constitution (Supreme Court) Act 2001, No. 12/2001**

*Assent Date:* 22.5.01  
*Commencement Date:* S. 7 on 23.5.01: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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**Food (Amendment) Act 2001, No. 14/2001**

*Assent Date:* 22.5.01  
*Commencement Date:* S. 34 on 1.1.02: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Judicial and Other Pensions Legislation (Amendment) Act 2001, No. 19/2001**

*Assent Date:* 29.5.01  
*Commencement Date:* S. 16 on 30.5.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Gas Industry Legislation (Miscellaneous Amendments) Act 2001, No. 32/2001**

*Assent Date:* 19.6.01  
*Commencement Date:* S. 35 on 1.9.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 77) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 27.6.01  
*Commencement Date:* S. 43 on 1.3.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001**

*Assent Date:* 23.10.01  
*Commencement Date:* S. 12 on 1.1.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001, No. 69/2001**

*Assent Date:* 7.11.01  
*Commencement Date:* S. 19 on 8.11.01: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Road Safety (Further Amendment) Act 2001, No. 92/2001**

*Assent Date:* 11.12.01  
*Commencement Date:* S. 31 on 21.12.01: Government Gazette 13.12.01 p. 3061  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Sentencing (Amendment) Act 2002, No. 2/2002** (as amended by No. 13/2003)

*Assent Date:* 26.3.02  
*Commencement Date:* S. 10 on 2.5.02: Government Gazette 2.5.02 p. 789;  
s. 11 on 17.2.03: Government Gazette 6.2.03 p. 190  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Judicial Remuneration Tribunal (Amendment) Act 2002, No. 4/2002**

*Assent Date:* 3.4.02  
*Commencement Date:* S. 12(4) on 1.1.02: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Statute Law (Further Revision) Act 2002, No. 11/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. 1 item 43) on 24.4.02: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Electoral Act 2002, No. 23/2002**

*Assent Date:* 12.6.02  
*Commencement Date:* S. 199 on 1.9.02: Government Gazette 29.8.02 p. 2333  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Magistrates' Court (Amendment) Act 2002, No. 26/2002**

*Assent Date:* 12.6.02  
*Commencement Date:* 12.6.02: s. 2  
*Current State:* All of Act in operation

**Magistrates' Court (Koori Court) Act 2002, No. 27/2002**

*Assent Date:* 12.6.02  
*Commencement Date:* Ss 4–9 on 13.6.02: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002**

*Assent Date:* 18.6.02  
*Commencement Date:* Ss 12–24, 28(Sch. item 4) on 19.6.02: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Environment Protection (Resource Efficiency) Act 2002, No. 37/2002**

*Assent Date:* 18.6.02  
*Commencement Date:* S. 53 on 19.6.02: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Sports Event Ticketing (Fair Access) Act 2002, No. 47/2002**

*Assent Date:* 22.10.02  
*Commencement Date:* S. 45 on 23.10.02: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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**Crimes (Property Damage and Computer Offences) Act 2003, No. 10/2003**

*Assent Date:* 6.5.03  
*Commencement Date:* S. 12 on 7.5.03: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Firearms (Trafficking and Handgun Control) Act 2003, No. 28/2003**

*Assent Date:* 20.5.03  
*Commencement Date:* S. 76 on 1.7.03: Special Gazette (No. 130) 1.7.03 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts Legislation (Amendment) Act 2003, No. 39/2003**

*Assent Date:* 11.6.03  
*Commencement Date:* Ss 5–10 on 12.6.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Australian Crime Commission (State Provisions) Act 2003, No. 52/2003**

*Assent Date:* 16.6.03  
*Commencement Date:* S. 52(Sch. 1 item 8) on 17.6.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Heritage (Amendment) Act 2003, No. 74/2003**

*Assent Date:* 21.10.03  
*Commencement Date:* S. 14 on 22.10.03: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Cemeteries and Crematoria Act 2003, No. 80/2003**

*Assent Date:* 11.11.03  
*Commencement Date:* S. 184 on 1.7.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Road Safety (Amendment) Act 2003, No. 94/2003**

*Assent Date:* 25.11.03  
*Commencement Date:* S. 45 on 1.1.05: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Fisheries (Further Amendment) Act 2003, No. 108/2003**

*Assent Date:* 9.12.03  
*Commencement Date:* S. 22 on 10.12.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts Legislation (Funds in Court) Act 2004, No. 30/2004**

*Assent Date:* 1.6.04  
*Commencement Date:* Ss 6, 14 on 1.7.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Courts Legislation (Judicial Appointments) Act 2004, No. 31/2004**

*Assent Date:* 1.6.04  
*Commencement Date:* Ss 3–8 on 2.6.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Judicial Salaries Act 2004, No. 38/2004**

*Assent Date:* 8.6.04  
*Commencement Date:* S. 14 on 9.6.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Mitcham-Frankston Project Act 2004, No. 39/2004**

*Assent Date:* 8.6.04  
*Commencement Date:* S. 260 on 24.9.04: Special Gazette (No. 206) 22.9.04 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Transport Legislation (Miscellaneous Amendments) Act 2004, No. 49/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* S. 40 on 17.6.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Crimes (Dangerous Driving) Act 2004, No. 59/2004**

*Assent Date:* 12.10.04  
*Commencement Date:* S. 10 on 13.10.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Sentencing (Superannuation Orders) Act 2004, No. 65/2004**

*Assent Date:* 12.10.04  
*Commencement Date:* S. 4(2) on 13.10.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Magistrates' Court (Increased Civil Jurisdiction) Act 2004, No. 68/2004**

*Assent Date:* 19.10.04  
*Commencement Date:* 1.1.05: s. 2  
*Current State:* All of Act in operation

**Magistrates' Court (Family Violence) Act 2004, No. 77/2004**

*Assent Date:* 9.11.04  
*Commencement Date:* Ss 3–5 on 1.4.05: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Occupational Health and Safety Act 2004, No. 107/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 181 on 1.7.05: s. 3(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 118) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Corrections (Transition Centres and Custodial Community Permits) Act 2005, No. 2/2005**

*Assent Date:* 5.4.05  
*Commencement Date:* S. 9 on 1.8.05: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts Legislation (Judicial Appointments and Other Amendments) Act 2005, No. 3/2005**

*Assent Date:* 5.4.05  
*Commencement Date:* Ss 16, 26–28 on 6.4.05: s. 2(1); ss 10–13 on 1.5.05: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 10.5.05  
*Commencement Date:* Ss 11, 12 on 11.5.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts Legislation (Judicial Conduct) Act 2005, No. 16/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 8 on 28.4.06: Special Gazette (No. 119) 28.4.06 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 63) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Magistrates' Court (Judicial Registrars and Court Rules) Act 2005, No. 19/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* Ss 3–5, 7–10 on 25.5.05: s. 2(1); s. 6 on 12.12.05: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Road Safety (Further Amendment) Act 2005, No. 24/2005**

*Assent Date:* 31.5.05  
*Commencement Date:* Ss 29, 30 on 1.6.05: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Courts Legislation (Miscellaneous Amendments) Act 2005, No. 30/2005**

*Assent Date:* 21.6.05  
*Commencement Date:* S. 3 on 22.6.05: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Dangerous Goods and Equipment (Public Safety) Acts (Amendment) Act 2005, No. 31/2005**

*Assent Date:* 21.6.05  
*Commencement Date:* S. 36 on 1.7.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Tobacco (Amendment) Act 2005, No. 45/2005**

*Assent Date:* 16.8.05  
*Commencement Date:* S. 29 on 1.3.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Radiation Act 2005, No. 62/2005**

*Assent Date:* 20.9.05  
*Commencement Date:* S. 143 on 1.9.07: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Sentencing and Mental Health Acts (Amendment) Act 2005, No. 69/2005**

*Assent Date:* 11.10.05  
*Commencement Date:* S. 28 on 1.10.06: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Firearms (Further Amendment) Act 2005, No. 78/2005**

*Assent Date:* 22.11.05  
*Commencement Date:* S. 68 on 1.7.06: Government Gazette 29.6.06 p. 1315  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Major Events (Crowd Management) and Commonwealth Games Arrangements Acts (Crowd Safety Amendment) Act 2005, No. 80/2005**

*Assent Date:* 22.11.05  
*Commencement Date:* S. 19 on 23.11.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Investigative, Enforcement and Police Powers Acts (Amendment) Act 2005, No. 87/2005**

*Assent Date:* 29.11.05  
*Commencement Date:* Pt 10 (ss 27–33) on 1.2.06: Special Gazette (No. 31) 31.1.06 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005**

*Assent Date:* 29.11.05  
*Commencement Date:* S. 10 on 1.7.06: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 7.3.06  
*Commencement Date:* Ss 39–41A on 1.12.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Rail Safety Act 2006, No. 9/2006**

*Assent Date:* 4.4.06  
*Commencement Date:* S. 159 on 1.8.06: Special Gazette (No. 181) 25.7.06 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Infringements Act 2006, No. 12/2006** (as amended by No. 32/2006)

*Assent Date:* 11.4.06  
*Commencement Date:* Ss 169–176 on 1.7.06: Government Gazette 29.6.06 p. 1315  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006**

*Assent Date:* 13.6.06  
*Commencement Date:* Ss 88, 89 on 1.7.06: Government Gazette 29.6.06 p. 1315  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Electoral and Parliamentary Committees Legislation (Amendment) Act 2006, No. 44/2006**

*Assent Date:* 25.7.06  
*Commencement Date:* S. 16 on 26.7.06: s. 2  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 15.8.06  
*Commencement Date:* S. 42(Sch. item 22) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Courts Legislation (Jurisdiction) Act 2006, No. 50/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* Ss 19–21, 35 on 16.8.06: s. 2(1); ss 15–18, 22–34 on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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**Courts Legislation (Neighbourhood Justice Centre) Act 2006, No. 51/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* Ss 3–5 on 2.1.07: Government Gazette 21.12.06  
p. 2768  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 10.10.06  
*Commencement Date:* S. 9 on 1.12.06: s. 2(4)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Justice Legislation (Further Amendment) Act 2006, No. 79/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 45 on 18.10.06: Special Gazette (No. 273) 17.10.06  
p. 1  
*Current State:* This information relates only to the provisions  
amending the **Magistrates' Court Act 1989**

**Major Events (Aerial Advertising) Act 2007, No. 13/2007**

*Assent Date:* 8.5.07  
*Commencement Date:* S. 48 on 9.5.07: s. 2  
*Current State:* This information relates only to the provisions  
amending the **Magistrates' Court Act 1989**

**Courts Legislation Amendment (Judicial Education and Other Matters) Act  
2007, No. 24/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 5 on 27.6.07: s. 2  
*Current State:* This information relates only to the provisions  
amending the **Magistrates' Court Act 1989**

**Payroll Tax Act 2007, No. 26/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 114 on 1.7.07: s. 2(1)  
*Current State:* This information relates only to the provisions  
amending the **Magistrates' Court Act 1989**

**Magistrates' Court and Coroners Acts Amendment Act 2007, No. 36/2007**

*Assent Date:* 14.8.07  
*Commencement Date:* Ss 3–7 on 15.8.07: s. 2  
*Current State:* This information relates only to the provisions  
amending the **Magistrates' Court Act 1989**

**Firearms Amendment Act 2007, No. 50/2007**

*Assent Date:* 17.10.07  
*Commencement Date:* S. 59 on 30.6.08: Government Gazette 26.6.08 p. 1388  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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**Justice and Road Legislation Amendment (Law Enforcement) Act 2007,  
No. 52/2007**

*Assent Date:* 17.10.07  
*Commencement Date:* S. 3 on 28.2.08: Government Gazette 31.1.08 p. 196  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Justice Legislation Amendment Act 2007, No. 53/2007**

*Assent Date:* 17.10.07  
*Commencement Date:* S. 23 on 8.11.07: Government Gazette 8.11.07 p. 2579  
*Current State:* This information relates only to the provisions  
amending the **Magistrates' Court Act 1989**

**Criminal Procedure Legislation Amendment Act 2008, No. 8/2008**

*Assent Date:* 18.3.08  
*Commencement Date:* Ss 5, 6, 11, 14–16, 20 on 1.7.08: s. 2(5)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Relationships Act 2008, No. 12/2008**

*Assent Date:* 15.4.08  
*Commencement Date:* S. 73(1)(Sch. 1 item 39) on 1.12.08: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 13.5.08  
*Commencement Date:* S. 14 on 1.7.08: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Constitution Amendment (Judicial Pensions) Act 2008, No. 23/2008**

*Assent Date:* 3.6.08  
*Commencement Date:* S. 20 on 4.6.08: s. 2(1)  
*Current State:* This information relates only to the provisions  
amending the **Magistrates' Court Act 1989**

**Police Integrity Act 2008, No. 34/2008**

*Assent Date:* 1.7.08  
*Commencement Date:* S. 143(Sch. 2 item 8) on 5.12.08: Special Gazette  
(No. 340) 4.12.08 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Courts Legislation Amendment (Juries and Other Matters) 2008, No. 38/2008**

*Assent Date:* 26.8.08  
*Commencement Date:* Ss 8, 9 on 1.12.08: Government Gazette 27.11.08  
p. 2755  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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**Family Violence Protection Act 2008, No. 52/2008**

*Assent Date:* 23.9.08  
*Commencement Date:* Ss 251–255 on 8.12.08: Special Gazette (No. 339)  
4.12.08 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Stalking Intervention Orders Act 2008, No. 68/2008**

*Assent Date:* 18.11.08  
*Commencement Date:* Ss 78–80 on 8.12.08: Special Gazette (No. 339)  
4.12.08 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Prohibition of Human Cloning for Reproduction Act 2008, No. 72/2008**

*Assent Date:* 25.11.08  
*Commencement Date:* S. 26 on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Research Involving Human Embryos Act 2008, No. 74/2008**

*Assent Date:* 25.11.08  
*Commencement Date:* S. 46 on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Assisted Reproductive Treatment Act 2008, No. 76/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 156 on 1.1.10: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 11.12.08  
*Commencement Date:* Ss 16, 17 on 31.12.09: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Salaries Legislation Amendment (Salary Sacrifice) Act 2008, No. 83/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* Ss 11, 12 on 11.12.08: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009**

*Assent Date:* 10.2.09  
*Commencement Date:* S. 37(Sch. 1 item 17) on 1.12.09: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 10.3.09  
*Commencement Date:* Ss 426, 427, 435(1) on 1.1.10: Government Gazette  
10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Sheriff Act 2009, No. 9/2009**

*Assent Date:* 24.3.09  
*Commencement Date:* Ss 73–76 on 1.10.09: Government Gazette 1.10.09  
p. 2539  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Justice Legislation Amendment Act 2009, No. 25/2009**

*Assent Date:* 17.6.09  
*Commencement Date:* S. 18 on 3.9.09: Government Gazette 3.9.09 p. 2331  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Major Sporting Events Act 2009, No. 30/2009**

*Assent Date:* 23.6.09  
*Commencement Date:* Ss 196–198 on 24.6.09: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Courts Legislation Amendment (Judicial Resolution Conference) Act 2009,  
No. 50/2009**

*Assent Date:* 8.9.09  
*Commencement Date:* Ss 12–15 on 16.9.09: Special Gazette (No. 319)  
16.9.09 p. 1—see **Interpretation of Legislation Act 1984**  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 82) on 1.1.10: Government Gazette  
10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 34), (Sch. Pt 2 item 32) on 1.1.10:  
s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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**Justice Legislation Miscellaneous Amendments Act 2009, No. 87/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* S. 60 on 17.12.09: Government Gazette 17.12.09  
p. 3338  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Accident Compensation Amendment Act 2010, No. 9/2010**

*Assent Date:* 23.3.10  
*Commencement Date:* S. 93 on 5.4.10: s. 2(7)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010,  
No. 12/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* Ss 4–7 on 21.4.10: Special Gazette (No. 135) 20.4.10  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Health and Human Services Legislation Amendment Act 2010, No. 29/2010**

*Assent Date:* 8.6.10  
*Commencement Date:* S. 63 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Justice Legislation Amendment Act 2010, No. 30/2010**

*Assent Date:* 8.6.10  
*Commencement Date:* Ss 85–87 on 26.6.10: Government Gazette 24.6.10  
p. 1274  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Courts Legislation Miscellaneous Amendments Act 2010, No. 34/2010**

*Assent Date:* 15.6.10  
*Commencement Date:* S. 50 on 16.6.10: s. 2(3); s. 49 on 1.1.11: s. 2(5)  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Superannuation Legislation Amendment Act 2010, No. 40/2010**

*Assent Date:* 30.6.10  
*Commencement Date:* S. 109 on 1.7.10: Government Gazette 1.7.10 p. 1359  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

**Civil Procedure Act 2010, No. 47/2010**

*Assent Date:* 24.8.10  
*Commencement Date:* Ss 88–92 on 1.1.11: Government Gazette 14.10.10  
p. 2404  
*Current State:* This information relates only to the provision/s  
amending the **Magistrates' Court Act 1989**

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

*Assent Date:* 7.9.10  
*Commencement Date:* S. 221(Sch. item 7) on 5.9.11: Special Gazette (No. 271) 23.8.11 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Justice Legislation Further Amendment Act 2010, No. 64/2010**

*Assent Date:* 28.9.10  
*Commencement Date:* Ss 63, 64 on 1.11.10: Government Gazette 21.10.10 p. 2530  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Bail Amendment Act 2010, No. 70/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* Ss 27–35 on 1.1.11: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Sentencing Amendment Act 2010, No. 77/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* S. 29 on 1.1.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Justice Legislation Amendment (Protective Services Officers) Act 2011, No. 43/2011**

*Assent Date:* 6.9.11  
*Commencement Date:* Ss 34–36 on 28.11.11: Special Gazette (No. 379) 22.11.11 p. 1  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

**Commercial Arbitration Act 2011, No. 50/2011**

*Assent Date:* 18.10.11  
*Commencement Date:* S. 46(Sch. item 12) 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 **Magistrates' Court Act 1989**

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

*Assent Date:* 22.11.11  
*Commencement Date:* S. 107(Sch. item 8) on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 3  
*Current State:* This information relates only to the provision/s amending the **Magistrates' Court Act 1989**

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### 3. Explanatory Details

<sup>1</sup> S. 9: The amendment proposed to section 9(10) by section 8(1) of the **Courts Legislation (Judicial Conduct) Act 2005**, No. 16/2005 is not included in this publication as section 9 was substituted by section 11 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005**, No. 3/2005.

<sup>2</sup> S. 58(1): Sections 10–13 of the **Magistrates' Court (Amendment) Act 1996**, No. 70/1996 read as follows:

#### 10 Payment of fines

- (1) An arrangement made before 14 November 1996—
  - (a) for an extension of time for the payment of a fine referred to in Schedule 7 to the Principal Act; or
  - (b) for the payment by instalments of a fine referred to in Schedule 7 to the Principal Act—

with a person authorised to execute a penalty enforcement warrant or a warrant to seize property or a warrant to imprison issued under clause 8(1) of that Schedule is deemed to be an order referred to in clause 7(1)(a) or (b), as the case may be, of that Schedule.

- (2) An arrangement made before 14 November 1996—
  - (a) for allowing time for the payment of a fine referred to in section 62 or 66 of the **Sentencing Act 1991**; or
  - (b) for the payment by instalments of a fine referred to in section 62 or 66 of the **Sentencing Act 1991**; or

(c) for a variation of—

(i) the terms of an instalment order referred to in section 62 or 66 of the **Sentencing Act 1991**; or

(ii) an arrangement referred to in paragraph (a) or (b)—

with a person authorised to execute a warrant to arrest issued under section 62 of that Act or a warrant to seize property issued under section 66 of that Act is deemed to be an order referred to in section 55(a), (b) or (c), as the case may be, of that Act.

## 11 Transitional

- (1) If, before 14 November 1996, a warrant has been recalled under section 58(1) of the Principal Act and a fresh warrant for the same purpose had purportedly been issued—
  - (a) the recalled warrant is deemed to have been cancelled on the date on which the fresh warrant was purportedly issued; and
  - (b) the fresh warrant and its execution are deemed to be valid despite any lack of power to issue the fresh warrant.
- (2) If, before 14 November 1996, a warrant referred to in section 58(2) of the Principal Act had been executed after its expiry under that section, the warrant and its execution are deemed to be valid despite that expiry.
- (3) If, before 14 November 1996, a warrant referred to in section 58(2) of the Principal Act had expired under that section and after its expiry the amount of the fine in respect of which it was issued or any part of that amount or any amount for associated costs were paid, those amounts are

deemed to have been lawfully demanded and recovered.

- (4) If, before 14 November 1996, a penalty enforcement warrant or a warrant to seize property or a warrant to imprison or a warrant to arrest directed to the sheriff was purportedly issued not in paper form, the warrant is deemed to be valid if its issue would have been valid had it been issued in paper form and signed or otherwise authenticated by the person issuing it.
- (5) A penalty enforcement warrant or a warrant to seize property or a warrant to imprison or a warrant to arrest which—
- (a) was issued under clause 8(1) of Schedule 7 to the Principal Act or under, or in accordance with an order made under, section 62 or 66 of the **Sentencing Act 1991** and included an amount for costs of execution or warrant costs; and
  - (b) was executed before 14 November 1996—
- is deemed to have been lawfully executed.
- (6) If, before 14 November 1996, a warrant was issued under clause 8(1) of Schedule 7 to the Principal Act or under, or in accordance with an order made under, section 62 or 66 of the **Sentencing Act 1991** and included an amount for costs of execution or warrant costs, but before execution the amount of the fine and costs were paid, those amounts are deemed to have been lawfully demanded and recovered.

## **12 No proceedings may be brought**

Proceedings, including proceedings—

- (a) seeking damages or compensation; or
- (b) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction; or
- (c) seeking a writ of habeas corpus; or
- (d) seeking an order under the **Administrative Law Act 1978**—

may not be brought in respect of any matter or thing that, by reason of the operation of this Act, is deemed to be valid or lawful or to have been validly or lawfully done.

## **13 Supreme Court—limitation of jurisdiction**

It is the intention of section 12 to alter or vary section 85 of the **Constitution Act 1975**.

<sup>3</sup> S. 58(2): Section 28(3) of the **Magistrates' Court (Amendment) Act 1994**, No. 33/1994 reads as follows:

## **28 Transitional provisions**

- (3) The amendments of the Principal Act made by sections 9, 11 and 22(a) to (g) (penalty enforcement warrants) apply to infringement penalties imposed before as well as after the commencement of those sections but if a penalty enforcement warrant is issued with respect to an infringement penalty imposed before that commencement—
  - (a) any warrant to imprison issued with respect to the infringement penalty must be recalled and cancelled in accordance with section 58(1) of the Principal Act; and

- (b) a fresh demand must be made under clause 8(2) of Schedule 7 of the Principal Act as amended by this Act.

<sup>4</sup> S. 58(2): Section 5(5) of the **Magistrates' Court (Amendment) Act 1996**, No. 70/1996 reads as follows:

### **5 Expiry of certain warrants**

- (5) Subsections (2) and (3) of section 58 of the Principal Act as in force before 14 November 1996 do not apply, and are deemed never to have applied, to a warrant referred to in those subsections if the warrant was executed before that date or the fine in respect of which it was issued, together with all associated costs, were paid before that date.

<sup>5</sup> S. 58(2): See note 2.

<sup>6</sup> S. 58(3): See note 4.

<sup>7</sup> S. 60(1): See note 3.

<sup>8</sup> S. 60(2): See note 3.

<sup>9</sup> S. 70(b)(iii) (*repealed*): See note 3.

<sup>10</sup> S. 82(2): S. 12 of the **Evidence (Audio Visual and Audio Linking) Act 1997**, No. 4/1997 reads as follows:

### **12 Transitional provisions**

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

- (2) For the purposes of subsection (1) in its application to criminal proceedings—
- (a) a trial is commenced to be heard on arraignment of the accused person; and
  - (b) a hearing of a charge for an offence is commenced to be heard on the taking of a formal plea from the accused person.

<sup>11</sup> S. 100: See section 3(1) def. of *jurisdictional limit*.

<sup>12</sup> Pt 5 Div. 3A: Section 47(2) of the **Courts and Tribunals (General Amendment) Act 1996**, No. 64/1996 reads as follows:

**47 Magistrates' Court Act 1989—transitional provisions**

- (2) The amendments made by section 35 to the **Magistrates' Court Act 1989** applies to proceedings, whether commenced before or after the commencement of that section.

<sup>13</sup> S. 115(3) (*repealed*): Section 28(6) of the **Magistrates' Court (Amendment) Act 1994**, No. 33/1994 reads as follows:

**28 Transitional provisions**

- (6) The amendments of the Principal Act made by section 16 (removal of compulsory age retirement for JPs) apply to any person who immediately before the commencement of that section held the office of justice of the peace.

<sup>14</sup> S. 115(7)(a) (*repealed*): See note 13.

<sup>15</sup> S. 126(1)(d): Section 28(7) of the **Magistrates' Court (Amendment) Act 1994**, No. 33/1994 reads as follows:

**28 Transitional provisions**

- (7) The amendments made by section 17 (extension of power to close proceedings to the public) apply to any proceeding being heard after the commencement of that section regardless of when the offence is alleged to have been committed.

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<sup>16</sup> S. 126(1)(e): See note 15.

<sup>17</sup> Sch. 4 (*repealed*):

Sch. 4 amended by Nos 25/1989 s. 8(3), 48/1989 s. 18 (as amended by No. 34/1990 s. 7(6)), 54/1989 s. 35(5) (as amended by No. 34/1990 s. 7(7)), 11/1990 s. 12(2) (as amended by No. 34/1990 s. 7(8)), 34/1990 s. 4(Sch. 3 items 20, 21), 8/1991 s. 14, 46/1991 s. 48, 81/1991 s. 10(Sch. item 2.1), 90/1991 s. 35, 67/1993 s. 26, 129/1993 s. 9(3), 21/1994 s. 39, 102/1994 s. 96, 63/1995 s. 169, 93/1995 s. 218(1)(Sch. 2 item 4), 99/1995 s. 24 (as amended by No. 73/1996 s. 63), 35/1996 s. 453(Sch. 1 item 53.7), 66/1996 s. 201(3) (as amended by No. 26/1997 s. 35(1)), 73/1996 s. 61, 26/1997 s. 55, 48/1997 s. 65(3)(a)–(c)(e)(f), 107/1997 s. 75, 108/1997 s. 154, 13/1998 s. 16, 60/1998 s. 17, 36/1999 s. 26, 39/1999 s. 39, 44/1999 s. 34, 49/2000 s. 4, 53/2000 s. 97, 69/2000 s. 57, 98/2000 s. 75, 2/2001 s. 110, 14/2001 s. 34, 32/2001 s. 35, 61/2001 s. 12(1), 69/2001 s. 19, 11/2002 s. 3(Sch. 1 items 43.1, 43.2), 23/2002 s. 199, 35/2002 s. 28(Sch. item 4.1), 47/2002 s. 45, 10/2003 s. 12, 28/2003 s. 76, 52/2003 s. 52(Sch. 1 item 8), 74/2003 s. 14, 80/2003 s. 184, 59/2004 s. 10, 107/2004 s. 181(1), 24/2005 s. 29, 31/2005 s. 36, 45/2005 s. 29, 62/2005 s. 143(1), 78/2005 s. 68, 9/2006 s. 159(1), 44/2006 s. 16, 50/2006 s. 22(3), 13/2007 s. 48, 50/2007 s. 59, 52/2007 s. 3, 53/2007 s. 23, 72/2008 s. 26, 74/2008 s. 46, 76/2008 s. 156, 30/2009 ss 197, 198, repealed by No. 7/2009 s. 427(2) (as amended by No. 68/2009 s. 54(m)).

<sup>18</sup> Sch. 5 (*repealed*): The amendment proposed by section 143(Schedule 2 item 8) of the **Police Integrity Act 2008**, No. 34/2008 is not included in this publication because of the earlier substitution of clause 8(1)(b) of Schedule 5 by section 9 of the **Courts Legislation Amendment (Juries and Other Matters) Act 2008**, No. 38/2008.

<sup>19</sup> Sch. 5 (*repealed*):

Sch. 5 amended by Nos 34/1990 s. 4(Sch. 3 item 22(a)–(g)), 49/1990 s. 4, 64/1990 ss 16, 20(Sch. item 4.4(a)(b)), 8/1991 ss 15, 16, 23/1991 ss 11, 12, 81/1991 s. 10(Sch. item 2.2), 33/1994 s. 20, 43/1994 s. 56(Sch. item 3.2), 35/1996 s. 453(Sch. 1 items 53.3, 53.8), 81/1997 s. 12, substituted by No. 10/1999 s. 4, amended by Nos 35/1999 s. 36(2), 92/2000 ss 7–9, 35/2002 ss 22, 23, 37/2002 s. 53, 108/2003 s. 22(2), 107/2004 s. 181(2), 30/2005 s. 3, 62/2005 s. 143(2), 2/2006 ss 39–41, 9/2006 s. 159(2), 50/2006 ss 27–34, 79/2006 s. 45, 36/2007 s. 6, 8/2008 s. 16, 18/2008 s. 14, 38/2008 s. 9, repealed by No. 7/2009 s. 427(2) (as amended by No. 68/2009 s. 54(m)).

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<sup>20</sup> Sch. 7 (*repealed*):

Sch. 7 amended by Nos 5/1990 s. 20(4), 34/1990 s. 4(Sch. 3 items 24, 25), 64/1990 s. 20(Sch. item 4.5), 49/1991 s. 119(7) (Sch. 4 item 13.8), 33/1994 ss 21–24(1), 64/1996 s. 40, 70/1996 s. 9, 44/1997 s. 30, 43/1998 s. 46, 102/1998 s. 44(2)(3), 10/1999 s. 31(2), 99/2000 ss 7, 8, 9, 10, 11 (as amended by No. 12/2001 s. 9), 12, 13 (as amended by No. 12/2001 s. 10), 44/2001 s. 3(Sch. item 77.2), 92/2001 s. 31, 26/2002 ss 5, 6, 39/2003 ss 8, 9, 94/2003 s. 45, 39/2004 s. 260, 49/2004 s. 40, 2/2005 s. 9, 3/2005 ss 27, 28, 24/2005 s. 30, 87/2005 ss 28–32, repealed by No. 12/2006 s. 176(2) (as amended by No. 32/2006 s. 53(2)).

<sup>21</sup> Sch. 7 (*repealed*): The amendment proposed by section 15(5) of the **Courts Legislation (Jurisdiction) Act 2006**, No. 50/2006 is not included in this publication due to the earlier repeal of Schedule 7 by section 176(2) of the **Infringements Act 2006**, No. 12/2006.