

Version No. 194
Constitution Act 1975
No. 8750 of 1975

Version incorporating amendments as at 1 January 2010

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The Parliament of Victoria enacts as follows:

Preamble

WHEREAS the Legislative Council of the Colony of Victoria did in the year 1854 pass a Bill intituled "An Act to establish a Constitution in and for the colony for Victoria":

And whereas the said Bill was presented to the then Lieutenant-Governor of Victoria for Her Majesty's assent and the said Lieutenant-Governor did thereupon declare that he reserved the said Bill for the signification of Her Majesty's pleasure thereon:

And whereas the Imperial Parliament deemed it expedient to authorize Her Majesty to assent to the said reserved Bill amended by the omission of certain provisions thereof:

And whereas the said Bill as amended was set forth in a Schedule to an Act of the Imperial Parliament passed in the 18th and 19th years of the reign of Her Majesty Queen Victoria intituled "An Act to enable Her Majesty to Assent to a Bill, as amended, of the Legislature of Victoria to establish a Constitution in and for the Colony of Victoria" by which Act Her Majesty in Council was authorized to assent to the said reserved Bill amended by the omission of certain provisions thereof, and the Bill was assented to accordingly:

And whereas by the said Bill as so amended the Colony of Victoria was established as a self-governing colony with responsible government:

And whereas the said Bill as so amended is the Constitution of Victoria and is known as The Constitution Act:

And whereas it is provided by section LX of the said The Constitution Act that the Legislature of Victoria has full power and authority from time to time by any Act or Acts to repeal alter or vary all or any of the provisions of The Constitution Act and to substitute others in lieu thereof:

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title and commencement¹

- (1) This Act may be cited as the **Constitution Act 1975**.
- (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

S. 1(3)
amended by
No. 9254
s. 2(a),
repealed by
No. 108/1994
s. 6(1)(a).

* * * * *

S. 1A
inserted by
No. 73/2004
s. 3.

1A Recognition of Aboriginal people

- (1) The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Victoria.
- (2) The Parliament recognises that Victoria's Aboriginal people, as the original custodians of the land on which the Colony of Victoria was established—

-
- (a) have a unique status as the descendants of Australia's first people; and
 - (b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and
 - (c) have made a unique and irreplaceable contribution to the identity and well-being of Victoria.
- (3) The Parliament does not intend by this section—
- (a) to create in any person any legal right or give rise to any civil cause of action; or
 - (b) to affect in any way the interpretation of this Act or of any other law in force in Victoria.

2 Existing laws

S. XL and XLI.

- (1) All laws which at the commencement of this Act are in force within Victoria shall remain and continue to be of the same force authority and effect as if this Act had not come into force except insofar as the same are repealed or varied by or under this or any subsequent Act.
- (2) All courts within Victoria and all offices judicial administrative or ministerial therein and all charters legal commissions powers and authorities except insofar as the same may be abolished altered or varied by or may be inconsistent with the provisions of this Act or are abolished altered or varied by any Act or Acts shall continue to subsist in the same form and with the same effect as if this Act had not come into force.
- (3) The Supreme Court of the State of Victoria as at present constituted shall continue under and subject to the provisions of this Act and shall for all purposes be deemed to be the same court after as before the commencement of this Act.

s. 3

S. 2(4)(5)
repealed by
No. 2/2003
s. 7(1).

* * * * *

9 Geo. IV.
c. 83 s. 24.

3 Laws of England to be applied in the administration of justice

- (1) Subject to the **Imperial Acts Application Act 1922**² all laws and statutes in force within the realm of England on the 25th day of July, 1828 (not being inconsistent with any law now in force) shall be applied in the administration of justice in the courts of Victoria, so far as they can be applied within Victoria.
- (2) If any doubt arises as to the application of any such laws or statutes in Victoria, it shall be lawful for the Parliament by Act to declare whether such laws or statutes shall be deemed to extend to Victoria, and to be in force within Victoria, or to make and establish such limitations and modifications of such laws and statutes within Victoria as may be deemed expedient in that behalf.

4 Continuation of existing Houses

S. 4(1)(2)
repealed by
No. 2/2003
s. 7(1).

* * * * *

No. 6224
s. 2(2).

- (3) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under any of the Acts or enactments repealed by this Act or existing or continuing under any of such Acts or enactments immediately before the commencement of this Act shall under and subject to this Act continue to have the same

- status operation and effect as they respectively would have had if such Acts or enactments had not been so repealed;
- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation rule by-law order appointment application probate letters of administration decision action cause matter appeal proceeding agreement examination affidavit declaration affirmation reference recognizance security certificate liability roll writ poll determination membership classification notice pension salary allowance liability or right made given issued accrued incurred or acquired or existing or continuing by or under any such Acts or enactments before the commencement of this Act.

5 Definitions

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

actuary means a fellow or accredited member of the Institute of Actuaries of Australia approved by the Minister;

S. 5 def. of *actuary* inserted by No. 19/2001 s. 4.

Assembly means Legislative Assembly of Victoria;

Associate Judge means an Associate Judge of the Court referred to in section 75(4);

S. 5 def. of *Associate Judge* inserted by No. 24/2008 s. 3(a).

S. 5 def. of *Chief Justice* amended by No. 109/1994 s. 4(1)(a) (as amended by No. 22/1995 s. 29(1)).

Chief Justice means the Chief Justice of the Supreme Court and includes *Acting Chief Justice* and in the absence of the Chief Justice and the Acting Chief Justice from duty means the senior Judge of the Court for the time being present;

S. 5 def. of *Consolidated Fund* amended by No. 18/1994 s. 66(Sch. 2 item 3).

Consolidated Fund means the Consolidated Fund constituted under the **Financial Management Act 1994**;

S. 5 def. of *Court of Disputed Returns* substituted by No. 23/2002 s. 189(1).

Council means Legislative Council of Victoria;

Court of Disputed Returns means the Court of Disputed Returns constituted under section 124 of the **Electoral Act 2002**;

S. 5 def. of *general election* substituted by No. 10146 s. 7(3), amended by No. 2/2003 s. 7(2)(a).

district means electoral district of the Assembly;

general election means an election at which all the members of the Council and Assembly have to be elected;

S. 5 def. of *insolvent under administration* inserted by No. 53/1999 s. 5.

insolvent under administration means—

- (a) a person who is an undischarged bankrupt; or
- (b) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the terms of the deed have not been fully complied with; or

- (c) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under Part IX of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the debt agreement has not ended or has not been terminated;

Judge of the Court means a Judge of the Court referred to in section 75(3);

S. 5 def. of *Judge of the Court* inserted by No. 24/2008 s. 3(a).

* * * * *

S. 5 def. of *Master* substituted by No. 109/1994 s. 4(1)(b), repealed by No. 24/2008 s. 3(b).

Parliament means Parliament of Victoria;

Parliamentary Committee, in Division 3 of Part V, has the same meaning as in the **Audit Act 1994**;

S. 5 def. of *Parliamentary Committee* inserted by No. 53/1999 s. 5.

* * * * *

S. 5 def. of *Parliamentary Offices Committee* repealed by No. 24/1996 s. 34(a).

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s. 5

S. 5 def. of
*periodical
election*
repealed by
No. 2/2003
s. 7(2)(b).

* * * * *

prescribed means prescribed by this Act or any regulation thereunder;

President means President of the Council and includes any person acting as the President of the Council;

presiding officer means—

- (a) in relation to the Legislative Council—the President; and
- (b) in relation to the Legislative Assembly—the Speaker;

S. 5 def. of
province
repealed by
No. 2/2003
s. 49(1)(a).

* * * * *

S. 5 def. of
region
inserted by
No. 2/2003
s. 49(1)(b).

region means electoral region of the Council;

Speaker means Speaker of the Assembly and includes any person acting as the Speaker of the Assembly;

S. 5 def. of
subdivision
repealed by
No. 24/1999
s. 44(1).

* * * * *

superannuation contributions surcharge means the superannuation contributions surcharge imposed by the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997 of the Commonwealth;

S. 5 def. of *superannuation contributions surcharge* inserted by No. 19/2001 s. 4.

superannuation contributions surcharge notice means a notice issued by the Commissioner of Taxation under section 15(7) of the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997 of the Commonwealth;

S. 5 def. of *superannuation contributions surcharge notice* inserted by No. 19/2001 s. 4.

Supreme Court means the Supreme Court of the State of Victoria.

total pension entitlement means, on a particular day, the current value of all future pension payments on that day.

S. 5 def. of *total pension entitlement* inserted by No. 19/2001 s. 4.

5A Definitions relating to pensions

S. 5A inserted by No. 23/2008 s. 3.

(1) For the purposes of section 83—

approved deposit fund has the meaning given by section 10(1) of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

domestic partner of a person means—

S. 5A(1) def. of *domestic partner* substituted by No. 23/2008 s. 22(1), amended by No. 4/2009 s. 37(Sch. 1 item 7.1).

- (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);

eligible rollover fund means a fund within the meaning of section 242 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

eligible superannuation plan means—

- (a) a regulated superannuation fund; or
- (b) an approved deposit fund; or
- (c) an exempt public sector superannuation scheme; or
- (d) an RSA;

exempt public sector superannuation scheme means a public sector superannuation scheme within the meaning of section 10(1) of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

flag lifting agreement has the meaning given by section 90MN of the Family Law Act 1975 of the Commonwealth;

flagging order means an order mentioned in section 90MU(1) of the Family Law Act 1975 of the Commonwealth;

interest has the meaning given by section 90MD of the Family Law Act 1975 of the Commonwealth;

member means a Judge of the Supreme Court;

member spouse, in relation to a superannuation interest, means the spouse who has the superannuation interest;

non-member spouse, in relation to a superannuation interest, means the spouse who is not the member spouse in relation to that interest;

partner of a person means—

- (a) in relation to a person who became entitled to benefits under this Act before the commencement of section 3 of the **Constitution Amendment (Judicial Pensions) Act 2008**—
 - (i) the person's husband, wife, widower or widow; or
 - (ii) a person of the opposite sex who, though not married to the person, in the opinion of the Minister lives with the person, or lived with the person at the date of the person's death, on a bona fide domestic basis as the person's husband or wife;
- (b) in any other case, the person's spouse or domestic partner;

payment flag has the meaning given by section 90MD of the Family Law Act 1975 of the Commonwealth;

regulated superannuation fund means a superannuation fund which complies with section 19 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

relevant condition of release means a condition of release mentioned in item 101, 102, 103 or 106 of Schedule 1 to the Superannuation Industry (Supervision) Regulations 1994 of the Commonwealth;

reversionary interest has the meaning given by section 90MF of the Family Law Act 1975 of the Commonwealth;

RSA means a retirement savings account within the meaning of the Retirement Savings Accounts Act 1997 of the Commonwealth;

specified period means the period which is specified to be the specified period in the specified standards;

splitting order means an order mentioned in section 90MT of the Family Law Act 1975 of the Commonwealth;

spouse of a person (except in sections 83(8) to 83(22)) means a person to whom the person is, or was at the time of the person's death, married;

superannuation agreement has the meaning given by section 90MD of the Family Law Act 1975 of the Commonwealth;

superannuation fund has the same meaning as in the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

superannuation interest means an interest that a person has as a member of an eligible superannuation plan, but does not include a reversionary interest;

unsplittable interest has the meaning given by section 90MD of the Family Law Act 1975 of the Commonwealth;

S. 5A(1) def. of *spouse* amended by No. 38/2009 s. 17(1)(a).

S. 5A(1) def. of *superannuation agreement* amended by No. 38/2009 s. 17(1)(b).

value at a particular time of the non-member spouse's entitlement in respect of the superannuation interest means the value as determined in accordance with regulation 14G(8) of the Family Law (Superannuation) Regulations 2001 of the Commonwealth;

value of the member spouse's interest in the Fund means the value as determined in accordance with Part 5 of the Family Law (Superannuation) Regulations 2001 of the Commonwealth.

(1A) For the purposes of sections 83(8) to 83(22), *spouse* has the meaning given by section 90MD of the Commonwealth Family Law Act 1975.

S. 5A(1A)
inserted by
No. 38/2009
s. 17(2).

(2) For the purposes of the definition of *domestic partner* in subsection (1)—

S. 5A(2)
substituted by
No. 23/2008
s. 22(2).

(a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

S. 5A(2)(a)
amended by
No. 4/2009
s. 37(Sch. 1
item 7.2(a)).

(b) in determining whether persons who are not or were not in a registered domestic relationship are or were 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.

S. 5A(2)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 7.2(b)).

(3) For the purposes of section 83, a reference to the transfer of an amount is to be construed as including a reference to the rollover of an amount.

PART I—THE CROWN

S. 6
substituted by
No. 108/1994
s. 4.

6 The Governor^{3, 4}

- (1) There shall be a Governor of the State of Victoria.
- (2) The appointment of a person as Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State.
- (3) Before assuming office, a person appointed as Governor shall take the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another judge of the Supreme Court.

S. 6A
inserted by
No. 108/1994
s. 4.

6A Lieutenant-Governor and Administrator⁵

- (1) There shall be—
 - (a) a Lieutenant-Governor of the State; and
 - (b) an Administrator of the State.
- (2) The Governor may appoint a person as Lieutenant-Governor during the Governor's pleasure by Commission under the Public Seal of the State.
- (3) The Administrator is—
 - (a) the Chief Justice of the Supreme Court; or
 - (b) if—
 - (i) the Chief Justice of the Supreme Court is the Lieutenant-Governor; or

S. 6A(2)
substituted by
No. 70/2009
s. 7(1).

S. 6A(3)
amended by
No. 70/2009
s. 7(2).

-
- (ii) there is a vacancy in the office of Chief Justice of the Supreme Court or the Chief Justice is absent from the State or unable or unwilling to act as Administrator—

the most senior judge of the Supreme Court who is present in the State and able and willing to act as Administrator—

and shall be deemed to have been appointed as Administrator during the Governor's pleasure.

- (4) The Governor may appoint a person as Administrator during the Governor's pleasure by Commission under the Public Seal of the State.
- (5) Subsection (3) does not apply if—
- (a) there is an Administrator appointed under subsection (4); and
 - (b) that Administrator is present in the State and able and willing to act.
- (6) The Lieutenant-Governor or Administrator must not assume the administration of the government of the State or act as the Governor's deputy unless the Lieutenant-Governor or Administrator, as the case may be, has taken on that occasion, or has previously taken, the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another judge of the Supreme Court.

S. 6A(4)
substituted by
No. 70/2009
s. 7(3).

S. 6B
inserted by
No. 108/1994
s. 4.

6B Administration by Lieutenant-Governor or Administrator⁶

- (1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State if—
 - (a) there is a vacancy in the office of Governor;
or
 - (b) the Governor has assumed the administration of the government of the Commonwealth; or
 - (c) the Governor—
 - (i) is absent from the State; or
 - (ii) is unable or unwilling to act—and there is not a subsisting appointment of a deputy under section 6C.
- (2) The Administrator shall not assume the administration of the government of the State unless—
 - (a) there is a vacancy in the office of Lieutenant-Governor; or
 - (b) the Lieutenant-Governor—
 - (i) is absent from the State; or
 - (ii) is unable or unwilling to act.
- (3) The Lieutenant-Governor or Administrator shall, upon assuming the administration of the government of the State, notify the Premier or, in the absence of the Premier, the Acting Premier.
- (4) The powers and functions of the Governor vest in the Lieutenant-Governor or Administrator during the administration of the government of the State by the Lieutenant-Governor or Administrator, as the case may be.

(5) The Lieutenant-Governor shall cease to administer the government of the State when—

- (a) a person is appointed to fill the vacancy in the office of Governor and has taken the required oaths or affirmations; or
- (b) the Governor ceases to administer the government of the Commonwealth; or
- (c) the Governor is no longer absent from the State or no longer unable or unwilling to act—

as the case requires, and the Lieutenant-Governor has been notified accordingly.

(6) The Administrator shall cease to administer the government of the State when—

- (a) a person is appointed to fill the vacancy in the office of Governor or Lieutenant-Governor and has taken the required oaths or affirmations; or
- (b) the Governor ceases to administer the government of the Commonwealth; or
- (c) the Governor or Lieutenant-Governor is no longer absent from the State or no longer unable or unwilling to act—

as the case requires, and the Administrator has been notified accordingly.

(7) A request in writing by the Premier (or, in the absence of the Premier, the Acting Premier) that the Lieutenant-Governor or the Administrator assume the administration of the State is sufficient authority for the Lieutenant-Governor or Administrator to do so.

s. 6C
inserted by
No. 108/1994
s. 4.

6C Deputy for Governor during short illness or absence⁷

(1) If—

- (a) the Governor is to be absent from the State or absent from Melbourne but not the State or is suffering from illness; and
- (b) the Governor has reason to believe that the duration of the absence or illness will not exceed 4 weeks—

the Governor may, by instrument in writing, appoint the Lieutenant-Governor or Administrator—

- (c) to be the Governor's deputy during that absence or illness; and
- (d) in that capacity, to exercise and perform on behalf of the Governor such of the powers and functions of the Governor as are specified or described in the instrument—

during the period specified or described in the instrument.

(2) The Administrator shall not be appointed as deputy under this section unless—

- (a) there is a vacancy in the office of Lieutenant-Governor; or
- (b) the Lieutenant-Governor—
 - (i) is absent from the State; or
 - (ii) is unable or unwilling to act; or
- (c) the Lieutenant-Governor has assumed the administration of the government of the State.

-
- (3) The Governor shall not appoint a deputy under this section except with the concurrence of the Premier or, in the absence of the Premier, the Acting Premier.
 - (4) The appointment of a person as deputy under this section may be revoked by the Governor at any time.
 - (5) The powers and functions of the Governor shall not be abridged, altered or in any way affected by the appointment of a person as deputy under this section.

6D Oath or Affirmation⁸

For the purposes of this Part—

- (a) a reference to the Oath or Affirmation of Allegiance is a reference to an Oath or Affirmation swearing or affirming to be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law; and
- (b) a reference to the Oath or Affirmation of Office is a reference to an Oath or Affirmation swearing or affirming well and truly to serve Her Majesty and Her Majesty's heirs and successors in the particular office and to do right to all manner of people after the laws and usages of the State, without fear or favour, affection or ill-will.

S. 6D
inserted by
No. 108/1994
s. 4.

6E Offices are not agencies under Freedom of Information Act 1982

Despite anything to the contrary in the **Freedom of Information Act 1982**, the Governor, the Lieutenant-Governor or the Administrator is not an agency within the meaning of that Act.

S. 6E
inserted by
No. 13/1997
s. 3.

No. 6224
s. 10(1).

7 Appropriation for staff and other expenses of the Governor

S. 7(1)
amended by
Nos 9773 s. 2,
1/1986 s. 4,
substituted by
No. 5/1992
s. 4,
amended by
Nos 109/1994
s. 4(2) (as
amended by
No. 22/1995
s. 29(2)),
8/2002 s. 3(1).

- (1) The Governor is entitled to an annual salary equal to the annual salary payable to a judge of the Supreme Court (other than the Chief Justice, the President of the Court of Appeal or a Judge of Appeal) from time to time.

S. 7(1A)
inserted by
No. 5/1992
s. 4.

- (1A) The expenses of the office of Governor shall be met from money appropriated by the Parliament for that purpose.

S. 7(1AA)
inserted by
No. 38/2009
s. 18(1).

- (1AA) If the Governor enters into an arrangement under Schedule 1A to the **Public Administration Act 2004**, the Governor may receive the whole or part of his or her total amount of future remuneration as non-salary benefits of an equivalent value.

S. 7(1B)
inserted by
No. 5/1992
s. 4.

- (1B) Despite any other provision made by, or under the authority of, this or any other Act, the right of the Governor to a pension payable by the State is suspended while he or she holds the office of Governor.

S. 7(2)
amended by
No. 38/2009
s. 18(2).

- (2) The salary (including the amount of any non-salary benefits) of the Governor shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

S. 7(3)
inserted by
No. 8/2002
s. 3(2).

- (3) Despite the commencement of the amendment of subsection (1) made by section 3(1) of the **Constitution (Governor's Salary) Act 2002**, subsection (1) (as in force immediately before the commencement of that Act) continues to apply during the continuance in office after that commencement of the person who held office as Governor on 28 June 2001.

(4) Despite the commencement of the amendments of this section made by section 18 of the **Superannuation Legislation Amendment Act 2009**, this section (as in force immediately before the commencement of that section 18) continues to apply during the continuance in office after that commencement of the person who held office as Governor immediately before that commencement.

S. 7(4)
inserted by
No. 38/2009
s. 18(3).

(5) In this section, *non-salary benefits* has the same meaning as it has in clause 3(5) of Schedule 1A to the **Public Administration Act 2004**.

S. 7(5)
inserted by
No. 38/2009
s. 18(3).

7A Governor's pension

S. 7A
inserted by
No. 9251 s. 2.

(1) Every Governor who—

S. 7A(1)
amended by
No. 9721
s. 2(a).

(a) has resigned or retired after serving in the office of Governor for a period of not less than five years; or

(b) having served in the office of Governor for a period less than five years has retired or resigned and the Governor in Council is satisfied that that person's retirement or resignation was due to ill health or physical or mental incapacity to perform the duties of that person's office—

S. 7A(1)(b)
amended by
No. 46/1987
s. 6.

shall subject to subsection (4) be entitled upon resignation or retirement from his office to a pension payable fortnightly at the rate per annum of sixty per centum of the annual salary of the Chief Justice of Victoria for the time being fixed under section 82(1).

(2) Reference to a Governor in subsection (1) of this section shall include a reference to any former Governor provided that any pension to which such former Governor thereby becomes entitled under this section shall only become due and payable on

s. 7A

and from the date on which the **Constitution (Governor's Pension) Act 1978** comes into operation and not before.

S. 7A(2A)
inserted by
No. 1/1986
s. 5(1).

(2A) A Governor who—

- (a) resigns or retires after serving in the office of Governor for a period of not less than one year but less than five years; and
- (b) is not entitled to a pension under subsection (1)(b)—

is, subject to subsection (4), entitled upon resignation or retirement from office to a pension payable fortnightly—

- (c) at the rate per annum calculated in accordance with the formula $\frac{AB}{5}$ where—

A is the amount of the pension to which the Governor would have been entitled under subsection (1) if the Governor had served in the office for five years; and

B is the number of full years served by the Governor in the office; or

S. 7A(2A)(d)
amended by
No. 46/1998
s. 7(Sch. 1).

- (d) at such higher rate per annum as was determined by the Governor in Council on the recommendation of the Premier and Minister administering Part 7 of the **Financial Management Act 1994** when the Governor was appointed or as is so determined when the Governor resigns or retires.

S. 7A(2B)
inserted by
No. 1/1986
s. 5(1).

(2B) A reference to a Governor in subsection (2A) includes a reference to a former Governor who resigns or retires on or after the commencement of section 5 of the **Constitution (Governor's Salary and Pension) Act 1985**.

-
- (3) Upon the death—
- (a) of any person who at the time of that person's death was serving in the office of Governor; or
- (b) of any person who being a former Governor is entitled to a pension under this section—
that person's partner shall subject to subsection (4) until the partner's death or marriage or until the partner becomes the domestic partner of another person be entitled to a pension payable fortnightly at the rate per annum of—
- (c) if the person was entitled to a pension under subsection (1)—three-eighths of the annual salary of the Chief Justice of Victoria for the time being fixed under section 82(1);
- (d) if the person was entitled to a pension under subsection (2A)—three-eighths of the pension to which the person would have been entitled but for the death.
- (4) The pension to which a person is entitled under this section shall be reduced by an amount equal to the total of the amounts, if any, that that person is entitled to receive by way of pension or retirement allowance in respect of that person's service or the service of the partner of that person under the Crown whether in right of the State of Victoria or otherwise in respect of public service in any part of the British Commonwealth of Nations but not including any amounts payable to that person under the Commonwealth Veterans'
- S. 7A(3)**
amended by
Nos 9721
s. 2(b), 1/1986
s. 5(2),
46/1987 s. 6,
23/2008
s. 4(1)(a)(b).
- S. 7A(3)(a)**
amended by
No. 46/1987
s. 6.
- S. 7A(3)(c)**
inserted by
No. 1/1986
s. 5(2).
- S. 7A(3)(d)**
inserted by
No. 1/1986
s. 5(2).
- S. 7A(4)**
amended by
Nos 46/1987
s. 6, 48/1987
s. 7, 23/2008
s. 4(1)(a).

s. 7B

Entitlements Act 1986 as amended from time to time or under any other Act enacted in any part of the British Commonwealth of Nations and proclaimed by proclamation of the Governor in Council published in the Government Gazette as an Act for the purposes of this subsection.

S. 7A(5)
amended by
Nos 46/1987
s. 6, 23/2008
s. 4(1)(a)(c).

(5) Notwithstanding anything contained in subsection (3) of this section no pension shall be payable to the partner of any former Governor in any case where that partner married or became the domestic partner of that former Governor after that person ceased to be the Governor.

S. 7A(5A)
inserted by
No. 23/2008
s. 5.

(5A) Subsections (8) to (22) of section 83 apply with such modifications as are necessary to and in respect of a pension under this section in the same circumstances and to the same extent as those subsections apply to and in respect of a pension under section 83.

S. 7A(6)
amended by
No. 19/2001
s. 5.

(6) All pensions payable pursuant to this section and any payments of lump sums provided by the commutation of those pensions shall be payable out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

S. 7B
inserted by
No. 19/2001
s. 6.

7B Election of Governor to commute future pensions for payment of superannuation contributions surcharge

S. 7B(1)
amended by
No. 23/2008
s. 4(2).

(1) The Governor may elect in writing to the Minister to have part of his or her future pension entitlement and that of his or her partner under this Act commuted to provide a lump sum for the purposes of payment of the whole of the liability for the superannuation contributions surcharge arising because of the entitlement of the Governor or his or her partner to receive a pension under this Act.

- (2) The Governor may by notice in writing to the Minister revoke his or her election under subsection (1).

7C Actuary's first calculation after Governor's election to commute pensions

S. 7C
inserted by
No. 19/2001
s. 6.

- (1) If an election under section 7B is in operation, within 10 days after the day on which the Governor resigns, retires or dies while in office, the Minister must—

- (a) cause an actuary to determine the extent to which the former Governor's pension and any future entitlement of the former Governor's partner to a pension upon the Governor's death otherwise payable under this Act will be reduced subject to subsection (4) and taking into account the lump sum to be provided by the commutation of part of the Governor's total pension entitlement and that of his or her partner at the time at which the former Governor became entitled to his or her pension for the purposes of payment of the whole of the liability for the superannuation contributions surcharge; and

S. 7C(1)(a)
amended by
No. 23/2008
s. 4(2).

- (b) notify the former Governor or, if he or she has died, the former Governor's partner of the actuary's determination under subsection (1)(a).

S. 7C(1)(b)
amended by
No. 23/2008
s. 4(2).

- (2) A former Governor or, if he or she has died, the former Governor's partner may revoke the election under section 7B within 10 days after the Minister's notification under subsection (1)(b).

S. 7C(2)
amended by
No. 23/2008
s. 4(2).

- (3) If an election under section 7B is in operation, the former Governor's pension and any future entitlement of the Governor's partner to a pension upon the Governor's death otherwise payable from

S. 7C(3)
amended by
No. 23/2008
s. 4(2).

s. 7D

time to time under this Act must be reduced to the extent determined under subsection (1).

- (4) For the purposes of subsection (1)—
- (a) the reduction of the former Governor's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Governor resigned or retired; and
 - (b) the reduction of any future entitlement of the Governor's partner to a pension must not exceed 15% of an amount equal to the total pension entitlement of the Governor's partner on the day on which the Governor resigned, retired or died while in office; and
 - (c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and
 - (d) each reduction must be applied from the entitlement day according to paragraph (a) or (b).

S. 7C(4)(b)
amended by
No. 23/2008
s. 4(2).

S. 7D
inserted by
No. 19/2001
s. 6.

S. 7D(1)
amended by
No. 23/2008
s. 4(2)(3).

S. 7D(1)(a)
amended by
No. 23/2008
s. 4(2).

7D Actuary's second calculation after Governor's election to commute pensions and payment of lump sum

- (1) If an election under section 7B is in operation, the former Governor or, if he or she has died, the former Governor's partner must, within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the former Governor's pension or his or her partner's pension, lodge with the Minister—
- (a) a notice that authorises the Minister to pay the lump sum that is equal to the superannuation contributions surcharge on behalf of the former Governor or his or her

- partner to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and
- (b) a copy of the superannuation contributions surcharge notice.
- (2) Within 10 days after the day on which the Minister received the authorisation and a copy of the superannuation contributions surcharge notice under subsection (1), the Minister must cause an actuary—
- (a) to review the determination made under section 7C(1); and
- (b) subject to section 7C(4), make any necessary adjustments to the determination and to the pension payable to the former Governor and to any future entitlement of the former Governor's partner to a pension upon the former Governor's death.
- (3) If an election under section 7B is in operation and the Minister has received an authorisation under subsection (1), the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

S. 7D(2)(b)
amended by
No. 23/2008
s. 4(2).

7E Election of former Governor to commute pensions for payment of superannuation contributions surcharge

S. 7E
inserted by
No. 19/2001
s. 6.

- (1) If no election under section 7B is in operation, a former Governor who is entitled to receive a pension under this Act may elect to have part of his or her pension and that of his or her partner commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the superannuation contributions surcharge arising

S. 7E(1)
amended by
No. 23/2008
s. 4(2).

s. 7F

because of the entitlement of the former Governor or his or her partner to receive a pension under this Act.

(2) An election under subsection (1) must—

S. 7E(2)(a)
amended by
No. 23/2008
s. 4(3).

(a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice is issued in respect of a former Governor's pension or his or her partner's pension; and

(b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pensions; and

S. 7E(2)(c)
amended by
No. 23/2008
s. 4(2).

(c) authorise the Minister to pay the lump sum on behalf of the former Governor or his or her partner to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and

(d) be accompanied by a copy of the superannuation contributions surcharge notice.

S. 7F
inserted by
No. 19/2001
s. 6.

7F Actuary's calculation after former Governor's election to commute pensions

(1) If an election under section 7E is in operation, the Minister must within 10 days after the day on which the Minister received the election—

S. 7F(1)(a)
amended by
No. 23/2008
s. 4(2).

(a) cause an actuary to determine the extent to which a former Governor's pension and any future entitlement of the former Governor's partner to a pension upon the Governor's death otherwise payable under this Act will be reduced subject to section 7G(3) and taking into account the specified amount of the lump sum to be provided by the commutation of the pensions; and

(b) notify the former Governor or, if he or she has died, the former Governor's partner of the actuary's determination under subsection (1)(a).

S. 7F(1)(b)
amended by
No. 23/2008
s. 4(2).

(2) A former Governor or, if he or she has died, the former Governor's partner may revoke the election under section 7E within 10 days after the Minister's notification under subsection (1)(b).

S. 7F(2)
amended by
No. 23/2008
s. 4(2).

7G Payment and commutation of the former Governor's pension

S. 7G
inserted by
No. 19/2001
s. 6.

(1) If an election under section 7E is in operation, the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

(2) The former Governor's pension and any future entitlement of the Governor's partner to a pension upon the Governor's death otherwise payable from time to time under this Act must be reduced to the extent determined under section 7F in consequence of the payment of the lump sum.

S. 7G(2)
amended by
No. 23/2008
s. 4(2).

(3) For the purposes of section 7F—

(a) the reduction of the former Governor's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Governor resigned or retired; and

(b) the reduction of any future entitlement of the Governor's partner to a pension must not exceed 15% of an amount equal to the total pension entitlement of the Governor's partner on the day on which the Governor resigned or retired; and

S. 7G(3)(b)
amended by
No. 23/2008
s. 4(2).

s. 7H

- (c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and
- (d) the reduction must be applied from the day of payment of the lump sum under subsection (1).

S. 7H
(Heading)
amended by
No. 23/2008
s. 4(2).

S. 7H
inserted by
No. 19/2001
s. 6.

7H Election of Governor's partner to commute pension for payment of superannuation contributions surcharge

S. 7H(1)
amended by
No. 23/2008
s. 4(2).

- (1) If no election made under section 7B or 7E is in operation, a person who is entitled to receive a pension under this Act as the partner of a deceased former Governor may elect to have part of his or her pension commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the superannuation contributions surcharge arising because of the entitlement of the former Governor to receive a pension under this Act or the entitlement of the deceased former Governor's partner to receive a pension under this Act.

S. 7H(2)(a)
amended by
No. 23/2008
s. 4(3).

- (2) An election under subsection (1) must—
 - (a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the deceased former Governor's pension or his or her partner's pension; and

- (b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pension; and
- (c) authorise the Minister to pay the lump sum on behalf of the person who is entitled to receive a pension under this Act as the partner of a deceased former Governor to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and
- (d) be accompanied by a copy of the superannuation contributions surcharge notice.

S. 7H(2)(c)
amended by
No. 23/2008
s. 4(2).

7I Actuary's calculation of reduction of pension of former Governor's partner

S. 7I (Heading)
amended by
No. 23/2008
s. 4(2).

- (1) If an election is made under section 7H, the Minister must within 10 days after the day on which the Minister received the election—
 - (a) cause an actuary to determine the extent to which the pension of a person who is entitled to receive a pension under this Act as the partner of a deceased former Governor otherwise payable under this Act will be reduced subject to section 7J(3) and taking into account the specified amount of the lump sum to be provided by the commutation of the pension; and
 - (b) notify the person of the actuary's determination under subsection (1)(a).
- (2) A person who is entitled to receive a pension under this Act as the partner of a deceased former Governor may revoke his or her election under section 7H within 10 days after the Minister's notification under subsection (1)(b).

S. 7I
inserted by
No. 19/2001
s. 6.

S. 7I(1)(a)
amended by
No. 23/2008
s. 4(2).

S. 7I(2)
amended by
No. 23/2008
s. 4(2).

s. 7J

7J Payment and commutation of pension of former Governor's partner

S. 7J
(Heading)
amended by
No. 23/2008
s. 4(2).

S. 7J
inserted by
No. 19/2001
s. 6.

(1) If an election under section 7H is in operation, the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

S. 7J(2)
amended by
No. 23/2008
s. 4(2).

(2) On payment of the lump sum, the pension of a person entitled to receive a pension as the partner of the deceased former Governor otherwise payable from time to time under this Act must be reduced to the extent determined under section 7I.

S. 7J(3)(a)
amended by
No. 23/2008
s. 4(2).

(3) For the purposes of section 7I—

(a) the reduction of any future entitlement of the Governor's partner to a pension must not exceed 15% of—

S. 7J(3)(a)(i)
amended by
No. 23/2008
s. 4(2).

(i) an amount equal to the total pension entitlement of the Governor and his or her partner on the day on which the Governor resigned or retired; or

S. 7J(3)(a)(ii)
amended by
No. 23/2008
s. 4(3).

(ii) in the case of the Governor's death while in office, an amount equal to his or her partner's total pension entitlement on the day on which the Governor died; and

(b) the reduction must be a fixed percentage to be applied to the pension entitlement under the Act; and

(c) the reduction must be applied from the day of payment of the lump sum under subsection (1).

8 Convocation, prorogation and dissolution

Constitution
Act s. XXVIII.

(1) The Governor may by proclamation or otherwise fix such places within Victoria and subject to this Act such times for holding every session of the Council and Assembly and may vary and alter the same respectively in such manner as he thinks fit.

(2) Subject to subsection (3) the Governor may if he thinks fit by proclamation or otherwise from time to time—

S. 8(2)
amended by
No. 10106
s. 4(a).

(a) prorogue the Council the Assembly or both the Council and the Assembly; or

(b) dissolve the Assembly.

(3) The Governor may not dissolve the Assembly (including the Assembly last elected before the **Constitution (Parliamentary Reform) Act 2003** receives the Royal Assent) unless—

S. 8(3)
inserted by
No. 10106
s. 4(b),
substituted by
No. 2/2003
s. 3.

(a) the Assembly is dissolved in accordance with section 8A; or

(b) the Premier has given advice to the Governor under section 65E(2) to dissolve the Assembly.

* * * * *

S. 8(4)–(6)
inserted by
No. 10106
s. 4(b),
repealed by
No. 2/2003
s. 3.

8A Dissolution of Assembly after a no confidence motion

S. 8A
inserted by
No. 2/2003
s. 4.

(1) The Assembly may be dissolved if—

(a) a motion of no confidence in the Premier and the other Ministers of State for the State of Victoria is passed by the Assembly; and

-
- (b) during the period commencing on the day of the passage of the motion of no confidence and ending 8 clear days after that day, the Assembly has not passed a motion of confidence in the then Premier and the other Ministers of State for the State of Victoria.
- (2) Notice of a proposed motion of no confidence under subsection (1)(a) must be given at least 3 clear days before it is moved.
- (3) After a motion of no confidence under subsection (1)(a) is passed, unless a motion of confidence is passed under subsection (1)(b), the Assembly may not be—
- (a) prorogued before the end of the period specified in subsection (1)(b); or
 - (b) adjourned for a period extending beyond the end of the period specified in subsection (1)(b).

No. 6224 s. 5.

9 Demise of the Crown not to dissolve Parliament

The Parliament in being at any demise of the Crown shall not be determined or dissolved by such demise, but shall continue so long as it would have continued but for such demise, unless it is sooner prorogued or dissolved by the Governor.

No. 6224 s. 4.

10 Certain acts not to be affected by a demise of the Crown

All things done within Victoria at any time after any demise of the Crown but before the Governor by his proclamation published in the Government Gazette has notified such demise and which but for this Act might be affected by such demise shall have the same effect and be of the same force as if no such demise had happened.

11 All appointments etc. by the Governor to continue in force notwithstanding demise of the Crown

No. 6224 s. 6.

- (1) Every commission warrant or other authority for the exercise of any office or employment of any kind or nature within Victoria issued or exercised by the Governor or the Governor in Council or by any other person in the name and on behalf of Her Majesty in virtue of his office or under the authority of any Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland or of the Parliament of Victoria or of any rules or regulations made thereunder respectively shall continue in full force notwithstanding any demise of the Crown and be of the same effect as if no such demise had happened.
- (2) No action suit or other process or proceeding civil or criminal in or to which Her Majesty is a party or which has been commenced or carried on in her name or by her authority shall by reason of her demise abate discontinue or be in any manner affected; but every such action suit process or proceeding shall be carried on enforced or otherwise completed or acted on in the name of the reigning Sovereign for the time being and as if such demise had not happened.
- (3) The Public Seal of the State and other Public Seals in being at the time of the demise of the Crown shall continue and be made use of as if no such demise had happened.

12 Exercise by the Governor of powers given to and reservation in favour of Her Majesty

No. 6224 s. 8.

Where in and by any grant or lease from the Crown or deed or document any exception or reservation is made in favour of or any power is given to Her Majesty or Her Majesty her heirs and successors, the Governor may on behalf of Her Majesty or Her Majesty her heirs and successors

s. 13

take the benefit and advantage of any such exception or reservation and may exercise any such power in the same manner as Her Majesty or Her Majesty her heirs and successors might have done.

S. 12A
inserted by
No. 10096
s. 4(4)(Sch.
item 6(a)),
substituted by
No. 70/1992
s. 3,
repealed by
No. 108/1994
s. 6(1)(b).⁹

* * * * *

No. 6224 s. 7.

13 Contracts by or on behalf of Her Majesty

All contracts of every kind lawfully entered into by or on behalf of Her Majesty or any of her successors to the Crown with any person body or authority and all benefit and advantage thereof and all liability in respect thereof shall attach and belong to the heirs and successors of Her Majesty or of such successors (as the case may be) although they are not expressly named in any such contract.

Constitution
Act s. XXXVI.

14 Governor's amendments

The Governor may transmit by message to the Council or the Assembly for its consideration any amendment which he desires to be made in any Bill presented to him for Her Majesty's assent and all such amendments shall be taken into consideration in such convenient manner as the standing rules and orders of the Council and the Assembly provide.

PART II—THE PARLIAMENT

Division 1—Constitution and powers

15 Parliament

No. 6224 s. 11.

The legislative power of the State of Victoria shall be vested in a Parliament, which shall consist of Her Majesty, the Council, and the Assembly, to be known as the Parliament of Victoria.

16 Legislative power of Parliament

Constitution
Act s. 1.

The Parliament shall have power to make laws in and for Victoria in all cases whatsoever.

16A The principle of Government mandate

S. 16A
inserted by
No. 2/2003
s. 12.

- (1) It is the intention of the Parliament that regard should be given to the following principle—

The Council as a House of Review will exercise its powers in recognition of the right and obligation of the current Government to implement—

- (a) the Government's specific mandate—the policies, promises and initiatives which were publicly released by or on behalf of the Government during the last election campaign; and
 - (b) the Government's general mandate—to govern for and on behalf of the people of Victoria.
- (2) The principle in subsection (1) is not to be construed as limiting the powers of the Council, the Assembly or the Parliament.

Constitution
Act s. LIV.

17 Waste lands of the Crown

Subject to this Act the Parliament may make laws regulating the sale letting disposal and occupation of the waste lands of the Crown within Victoria and of all mines and minerals which are within the jurisdiction control or disposition of Her Majesty in and adjacent to Victoria.

Constitution
Act ss LX and
LXI.

18 Power for Parliament to alter this Act

S. 18(1)
amended by
No. 2/2003
s. 17(1).

- (1) Subject to this section, the Parliament may by any Act repeal alter or vary all or any of the provisions of this Act and substitute others in lieu thereof.

S. 18(1A)
inserted by
No. 2/2003
s. 17(2).

- (1A) In this section—

referendum means a referendum conducted in accordance with Part 9A of the **Electoral Act 2002**;

special majority means 3/5ths of the whole number of the members of the Assembly and of the Council respectively.

S. 18(1B)
inserted by
No. 2/2003
s. 17(2).

- (1B) It shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which—
- (a) this subsection or subsection (1A), (1BA), (1C) or (3); or
 - (b) Subdivision 1 of Division 5 of Part II; or
 - (c) Subdivision 2 of Division 5 of Part II; or
 - (d) Subdivision 1 of Division 6 of Part II; or
 - (e) Subdivision 2 of Division 6 of Part II; or
 - (f) Subdivision 3 of Division 6 of Part II; or
 - (g) section 41; or
 - (h) Division 9 of Part II; or
 - (i) Division 9A of Part II; or

- (j) Part IIA; or
- (k) section 75(1); or
- (l) Part IIIA; or
- (m) Part IV; or
- (n) Division 3 of Part V; or
- (o) Part VA; or
- (p) any provision substituted for any provision specified in paragraphs (a) to (o)—

may be repealed, altered or varied unless the Bill has been passed by the Assembly and the Council and approved by the majority of the electors voting at a referendum.

- (1BA) For the purposes of subsection (1B), a provision of a Bill is not to be taken to repeal, alter or vary Part IIA unless the Bill expressly refers to that Part in, or in relation to, that provision and expressly, and not merely by implication, states an intention to repeal, alter or vary Part IIA.

**S. 18(1BA)
inserted by
No. 2/2003
s. 17(2).**

- (1C) A Bill to which subsection (1B) applies must be submitted to a referendum on a day not sooner than 59 days after the Bill has been passed by the Assembly and the Council.

**S. 18(1C)
inserted by
No. 2/2003
s. 17(2).**

- (2) It shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which—

**S. 18(2)
amended by
Nos 9254
s. 2(b),
35/1991
s. 5(1),
62/1999 s. 10,
53/1999 s. 4,
substituted by
No. 2/2003
s. 17(2),
amended by
No. 37/2003
s. 4(1)(d).**

- (aa) section 1A; or

**S. 18(2)(aa)
inserted by
No. 73/2004
s. 4.**

S. 18(2)(c)
amended by
No. 37/2003
s. 4(1)(a).

- (a) Part I; or
- (b) Division 1 of Part II (other than section 18);
or
- (c) this subsection or subsection (4) or (6); or

S. 18(2)(fa)
inserted by
No. 37/2003
s. 4(1)(b).

- (d) Subdivision 1 of Division 7 of Part II; or
- (e) Subdivision 2 of Division 7 of Part II; or
- (f) Section 61A; or
- (fa) Part VII; or

S. 18(2)(fb)
inserted by
No. 16/2005
s. 3(1).

- (fb) Part IIIAA; or

S. 18(2)(g)
amended by
Nos 37/2003
s. 4(1)(c),
16/2005
s. 3(2).

- (g) any provision substituted for any provision
specified in paragraphs (a) to (fb)—

may be repealed, altered or varied or any Bill by
which—

S. 18(2)(h)
inserted by
No. 37/2003
s. 4(1)(d).

- (h) responsibility for ensuring the delivery of a
water service (within the meaning of Part
VII) may be transferred to a person or body
that is not a public authority (within the
meaning of that Part) or the accountability to
a responsible Minister of the Crown of such
an authority for ensuring the delivery of such
a service may be removed—

unless the third reading of the Bill is passed by a
special majority.

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- (2AA) It shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which—
- (a) this subsection or subsection (2A) or (5); or
 - (b) Part III (other than section 75(1) or 85); or
 - (c) any provision substituted for any provision specified in paragraph (a) or (b)—
- may be repealed, altered or varied unless the third reading of the Bill is passed by an absolute majority.
- (2A) A provision of a Bill by which section 85 may be repealed, altered or varied is void if the third reading of the Bill is not passed with the concurrence of an absolute majority of the whole number of the members of the Council and of the Assembly respectively.
- (3) Any Bill dealing with any of the matters specified in subsection (1B) which has not been approved in accordance with that subsection is void.
- (4) Any Bill dealing with any of the matters specified in subsection (2) which has not been passed in accordance with that subsection is void.
- (5) Any Bill dealing with any of the matters specified in subsection (2AA) which has not been passed in accordance with that subsection is void.
- (6) Subsection (2) does not apply to any Bill to—
- (a) enable a public authority (within the meaning of Part VII) to enter into an arrangement of any kind with a person or body (including an independent contractor) relating to the delivery of a water service (within the meaning of that Part); or
 - (b) alter the structure, composition or membership of a public authority (within the meaning of Part VII) that has responsibility
- S. 18(2AA) inserted by No. 2/2003 s. 17(2).**
- S. 18(2A) inserted by No. 35/1991 s. 5(2), amended by No. 2/2003 s. 17(3).**
- S. 18(3) substituted by No. 2/2003 s. 17(4).**
- S. 18(4) substituted by No. 2/2003 s. 17(4).**
- S. 18(5) inserted by No. 2/2003 s. 17(4).**
- S. 18(6) inserted by No. 37/2003 s. 4(2).**

for ensuring the delivery of a water service (within the meaning of that Part) if the alteration does not affect its status or the status of a successor body as such a public authority accountable to a responsible Minister of the Crown for ensuring the delivery of that service.

Division 2—Privileges of Parliament

No. 6224 s. 12.

19 Privileges powers etc. of Council and Assembly

- (1) The Council and the Assembly respectively and the committees and members thereof respectively shall hold enjoy and exercise such and the like privileges immunities and powers as at the 21st day of July, 1855 were held enjoyed and exercised by the House of Commons of Great Britain and Ireland and by the committees and members thereof, so far as the same are not inconsistent with any Act of the Parliament of Victoria, whether such privileges immunities or powers were so held possessed or enjoyed by custom statute or otherwise.
- (2) The Parliament may by Act legislate for or with respect to the privileges immunities and powers to be held enjoyed and exercised by the Council and the Assembly and by the committees and the members thereof respectively.

No. 6224 s. 13.

- (3) Any copy of the Journals of the House of Commons printed or purporting to be printed by the order or printer of the House of Commons shall be received as prima facie evidence without proof of its being such copy, upon any inquiry touching the privileges immunities and powers of the Council or the Assembly or of any committee or member thereof respectively.

19A Power to the Council and the Assembly and committees and joint committees thereof to administer oaths to witnesses

S. 19A
inserted by
No. 9695 s. 2.

(1) In this section, *committee* means a committee of the Council or of the Assembly or a joint committee of the Council and the Assembly or a sub-committee of a Joint Investigatory Committee within the meaning of the **Parliamentary Committees Act 2003** or a member of a Joint Investigatory Committee or such a sub-committee who is empowered to take evidence under section 28 or 32 of that Act.

S. 19A(1)
amended by
No. 9765 s. 10,
substituted by
No. 110/2003
s. 55(1).

(2) The Council or the Assembly may administer an oath to the witnesses examined at the bar of the Council or the Assembly (as the case may be).

(3) Any committee may administer an oath to the witnesses examined before such committee including by means of audio link or audio visual link in accordance with section 28(4A) of the **Parliamentary Committees Act 2003**.

S. 19A(3)
amended by
No. 44/2006
s. 23(1).

(4) Any oath or affirmation taken or made by any witness before the Council or the Assembly or a committee of the whole Council or of the whole Assembly may be administered by the Clerk of the Council or the Clerk of the Assembly (as the case may be) at the table.

(5) Any oath or affirmation taken or made by any witness before any other committee may be administered by—

S. 19A(5)
amended by
No. 9765 s. 10,
substituted by
No. 110/2003
s. 55(2).

- (a) the chairperson of the committee; or
- (b) the clerk attending the committee; or

s. 19A

S. 19A(5)(c)
amended by
No. 44/2006
s. 23(2).

- (c) a member of a Joint Investigatory Committee or sub-committee of a Joint Investigatory Committee within the meaning of the **Parliamentary Committees Act 2003** empowered to take evidence under that Act or if section 28(4A)(b) of that Act applies, a person authorised by the Joint Investigatory Committee for the purposes of that section.
- (6) In any case where a witness, if to be examined before the Supreme Court, would be permitted to make a solemn affirmation or declaration or to give evidence in any other way than upon oath, a witness to be examined under this section shall be in like manner allowed to give evidence upon affirmation or declaration or otherwise, as aforesaid.
- (7) No action shall be maintainable against any witness who has given evidence, whether on oath or otherwise, under the authority of this Act, for or in respect of any defamatory words spoken by him while giving such evidence.
- (8) Every person examined under this section who wilfully gives false evidence shall be liable to the penalties of perjury.
- (9) Nothing in this section shall derogate from any power or privilege of either House, or of the members or committees of either House or of the joint committees of the Council and the Assembly, but no person shall be liable to be proceeded against or punished twice for the same offence whether as a breach of privilege or as an offence against this section or any other enactment or at common law.

Division 3—Summoning of Parliament. oath of allegiance

20 Summoning of Parliament

No. 6224 s. 50.

The Governor may by proclamation summon the Council and the Assembly to meet for the despatch of the business of the Parliament on any day not less than six days from the date of such proclamation or in a case of emergency upon such shorter notice as he may think fit.

21 Effect of summoning of Parliament

No. 6224 s. 51.

When the Governor by proclamation summons the Council and the Assembly for the despatch of the business of the Parliament as provided by the last preceding section the Council and the Assembly shall thereupon stand adjourned to the day and time declared in such proclamation notwithstanding any previous adjournment of the Council and the Assembly or either of them to any later day and notwithstanding any former law usage or practice to the contrary.

22 How in case of adjournment orders of either House shall be deemed to have been appointed

No. 6224 s. 52.

All orders made by the Council or the Assembly and appointed for the day to which the Council or the Assembly (as the case may be) has been adjourned or to any day or days subsequent thereto other than and except any order or orders specially appointed for particular days and declared to be so fixed notwithstanding any meeting under the provisions of section 20 and other than any order made under the express provisions of any Act shall be deemed and taken to have been appointed for the day on which the Council and the Assembly shall meet in pursuance of such proclamation.

No. 6224 s. 53.

23 Oath of allegiance

- (1) No member either of the Council or the Assembly shall be permitted to sit or vote therein respectively until he has taken and subscribed before the Governor or some person authorized by the Governor in that behalf the oath or affirmation in the Second Schedule.
- (2) Whenever the demise of the Crown is notified by the Governor to the Council and the Assembly, the members of the Council and of the Assembly shall before they are permitted to sit or vote therein respectively take and subscribe the like oath or affirmation to the successor for the time being to the Crown.

Division 4—Presiding officers

24 As to term of office and power of presiding officers

- (1) If the presiding officer of the Council or the Assembly resigns his office or his seat, he shall, for the purposes of the exercise of any powers or functions by the presiding officer of that House under this or any other Act or under the standing orders or the joint standing orders be deemed to continue to be the presiding officer of that House (whether or not that House is dissolved after he so resigns) until the day before a presiding officer is to be chosen by that House.
- (2) If the President of the Council ceases to be a member of the Council by reason of the expiration of his term of office, he shall, for the purposes of the exercise of any powers or functions by the President of the Council under this or any other Act or under the standing orders or the joint standing orders be deemed to continue to be the President of the Council until the day before a President is to be chosen by the Council.

S. 24(2)
amended by
No. 2/2003
s. 49(2).

(3) If—

- (a) the presiding officer of either House; or
- (b) a person who, by virtue of this section, is deemed to be, for the purposes of the exercise of any powers or functions of the presiding officer of either House, to be or to continue to be the presiding officer of that House—

dies, is absent from Victoria or is incapable by reason of illness leave of absence or other unavoidable cause from exercising any powers or functions conferred or imposed upon the presiding officer, the Chairman of Committees of that House shall, for the purposes of the exercise of any powers or functions of the presiding officer of that House, be deemed to be the presiding officer of that House (whether or not that House is dissolved after the death or during the absence or incapacity) until a presiding officer is chosen by that House or the absence or incapacity terminates, as the case may be.

(4) For the purposes of subsection (3) where there is no Chairman of Committees of a House, the person who last held office as Chairman of Committees of that House shall be deemed to continue to be Chairman of Committees of that House until a Chairman of Committees of that House is appointed by that House.

(5) Where the Assembly is dissolved, the person, if any, who is the presiding officer of a House immediately before the dissolution shall, for the purposes of the exercise of any powers or functions of the presiding officer of that House under this or any other Act or under the standing orders or the joint standing orders, be deemed to continue to be the presiding officer of that House

**S. 24(5)
amended by
No. 2/2003
s. 7(3)(a)(b).**

until the day before a presiding officer is to be chosen by that House.

S. 24(6)
amended by
No. 2/2003
s. 7(4)(a)(b).

- (6) If, after the Assembly has been dissolved the person (if any) who was the presiding officer of a House immediately before the dissolution dies, is absent from Victoria or is incapable by reason of illness of exercising any powers or functions under this or any other Act or under the standing orders or the joint standing orders, the person who last held office as Chairman of Committees of that House shall, for the purposes of the exercise of any powers or functions by the presiding officer of that House under any such Act or Order be deemed to be the presiding officer of that House until a presiding officer is chosen by that House or the absence or incapacity terminates, as the case may be.

Division 5—Legislative Council

No. 6224 s. 67.

25 Definitions

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

member means a member of the Council;

seat means the right of sitting and voting as a member in the Council.

Pt 2 Div. 5
Subdiv. (1)
(Heading)
amended by
No. 2/2003
s. 49(3).

Subdivision (1)—Regions and members

No. 6224 s. 68.

26 Number of members of the Council

S. 26
substituted by
No. 2/2003
s. 8.

- (1) This section and section 27 apply in respect of the first Council to be elected after the **Constitution (Parliamentary Reform) Act 2003** receives the Royal Assent and each subsequent Council.

- (2) The Council is to consist of 40 members who are to be representatives of, and elected by, the electors of the respective regions.

27 Division of Victoria into 8 regions

- (1) The State of Victoria is to be divided into 8 regions each of which is to return 5 members to the Council.
- (2) Each region must—
- (a) consist of 11 districts; and
 - (b) have a boundary that is contiguous with the boundaries of the districts that constitute the region.
- (3) The Electoral Boundaries Commission must in accordance with the **Electoral Boundaries Commission Act 1982**—
- (a) divide the State of Victoria into regions; and
 - (b) publish the name and boundaries of each region in the Government Gazette.

No. 6224 s. 69.
S. 27
amended by
Nos 9892
s. 2(1),
24/1999
s. 44(2)(3),
substituted by
No. 2/2003
s. 8.

27A Filling of casual vacancies in the Council

- (1) Subject to this section, if a casual vacancy occurs in the seat of a member of the Council, a person must be chosen to occupy the vacant seat by a joint sitting of the Council and the Assembly.
- (2) A joint sitting of the Council and the Assembly need not be held if the casual vacancy occurs 3 months or less before the day on which the seat would have become vacant due to the expiry of the Assembly.
- (3) Subsection (4) applies if a casual vacancy occurs in the seat of a member of the Council who was at the time that the member was elected endorsed as a candidate in the election by a registered political party the name of which was printed adjacent to

S. 27A
inserted by
No. 2/2003
s. 9.

the name of the candidate on the ballot-paper under section 74 of the **Electoral Act 2002**.

- (4) If this subsection applies, the joint sitting of the Council and the Assembly must choose a member of the registered political party referred to in subsection (3) nominated by that registered political party if the registered political party nominates a member of the registered political party for the vacancy who would otherwise be qualified to be elected a member of the Council.
- (5) If subsection (4) does not apply, the joint sitting of the Council and the Assembly must choose a person who—
 - (a) would otherwise be qualified to be elected as a member of the Council and has resided in the region to which the vacancy relates for a period of not less than 12 months immediately before the joint sitting; and
 - (b) has not been a member of a political party at any time during the period of 5 years immediately before the joint sitting.
- (6) Subject to subsection (7), the joint sitting of the Council and the Assembly is to be conducted in accordance with the rules adopted by the members present at the joint sitting.
- (7) At the joint sitting of the Council and the Assembly—
 - (a) the members have the same privileges and immunities as the members of the Assembly in relation to proceedings before that House;
 - (b) a question—
 - (i) other than a question to which subparagraph (ii) applies, is to be decided by a majority of the votes cast

by the members present at the joint sitting;

- (ii) for the purpose of subsection (5) is to be decided by a special majority being 3/5ths of the whole number of members of both the Council and the Assembly present at the joint sitting;
- (c) in the event of an equality of votes on a question, the question is to be taken to have been determined in the negative.

28 Duration of the Council

- (1) The Council which is in existence immediately before the **Constitution (Parliamentary Reform) Act 2003** receives the Royal Assent shall exist and continue until the dissolution or other lawful determination of the Assembly last elected before that Royal Assent is received.
- (2) The Council (other than the Council to which subsection (1) applies) shall exist and continue until the dissolution or other lawful determination of the Assembly.

No. 6224
ss 70–72.

S. 28
substituted by
Nos 10106
s. 5, 2/2003
s. 5.

29 Member of Assembly not capable of being member of Council

A member of the Assembly may not be elected to or sit or vote as a member of the Council.

Constitution
Act s. XVI.

29A Title of members

- (1) A member of the Council who is not the President or a member of the Executive Council is not entitled to be styled "The Honourable".
- (2) Nothing in subsection (1) affects any privilege or right of a person who ceased to be a member of the Council before the commencement of section 10 of the **Constitution (Parliamentary Reform) Act 2003** to be styled "The Honourable".

S. 29A
inserted by
No. 2/2003
s. 10.

Constitution
Act s. VIII.

30 Resignation of members

A member may resign his seat by a letter addressed to the Governor and on its receipt by the Governor the seat of such member shall become vacant.

Subdivision (2)—Proceedings of the Council

Constitution
Act s. VI.

31 Election of President

- (1) The Council, if there is no President, shall before proceeding to the despatch of any other business elect a member of the Council to be the President.
- (2) In the case of the death resignation or removal by a vote of the Council of the President the Council shall before proceeding to the despatch of any other business elect some other member to be the President.
- (3) The President so elected shall preside at the meetings of the Council except as may be provided by the standing rules and orders.

Constitution
Act s. IX.

32 Quorum of Legislative Council

S. 32(1)
amended by
No. 2/2003
s. 11(1).

- (1) The Council shall not proceed to the despatch of business unless there be present inclusive of the President one-third at least of the members.

S. 32(2)
substituted by
No. 2/2003
s. 11(2).

- (2) Subject to subsection (2A) and section 18, all questions arising in the Council shall be determined by a majority of the members present including the President.

S. 32(2A)
inserted by
No. 2/2003
s. 11(2).

- (2A) The President has a deliberative vote but not a casting vote.
- (3) The Chairman of Committees shall be the Deputy President of the Council.

Division 6—Legislative Assembly

33 Definitions

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

member means a member of the Assembly;

seat means the right of sitting and voting as a member in the Assembly.

Subdivision (1)—Districts and members

34 Constitution of Assembly

No. 6224 s. 85.

The Assembly shall consist of members who shall be representatives of and be elected by the electors of the respective districts.

35 Division of Victoria into electoral districts

No. 6224
ss 86, 87.

(1) Victoria shall be divided into 88 districts each of which shall return one member to the Assembly.

S. 35(1)
amended by
No. 9892
s. 3(1).

(1A) The abolition of subdivisions does not affect the election of members of the Assembly or the enrolment of electors in respect of a district.

S. 35(1A)
inserted by
No. 24/1999
s. 44(4).

(2) The name and boundaries of each district shall be published in the Government Gazette.

* * * * *

S. 35(3)(4)
repealed by
No. 24/1999
s. 44(2).

36 Member of Council not capable of being member of Assembly

Constitution
Act s. XVI.

A member of the Council may not be elected to or sit or vote as a member of the Assembly.

Constitution
Act s. XXIII.

37 Resignation of members

A member may resign his seat by a letter addressed to the Speaker and on its receipt by the Speaker the seat of such member shall become vacant.

Subdivision (2)—Duration of the Assembly

No. 6224
s. 101.

S. 38
substituted by
Nos 10106
s. 6, 2/2003
s. 6.

38 Duration of Assembly

- (1) Subject to subsection (2), the Assembly last elected before the **Constitution (Parliamentary Reform) Act 2003** receives the Royal Assent and each subsequent Assembly shall expire on the Tuesday which is 25 days before the last Saturday in November which is nearest to the fourth anniversary of the election day on which it was elected.
- (2) If the previous Assembly is dissolved, the subsequent Assembly shall expire on the Tuesday which is 25 days before the last Saturday in November which is nearest to the last anniversary of the election day on which it was elected that occurs not more than 4 years after it was elected.

S. 38A
inserted by
No. 2/2003
s. 6.

38A Date of general election

- (1) The writs issued under the **Electoral Act 2002** for a general election of the Assembly and Council must name as the election day—
 - (a) if the previous Assembly expired, the last Saturday in November nearest to the fourth anniversary of the election day on which the previous Assembly was elected or if section 38(2) applies, the Saturday referred to in that section; or
 - (b) if the previous Assembly was dissolved, a Saturday within the period that starts 15 days after the final nomination day and ends 30 days after the final nomination day.

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- (2) Despite subsection (1)(a), in exceptional circumstances, on the recommendation of the Premier with the agreement of the Leader of Her Majesty's Opposition, the Governor may postpone the election day under subsection (1)(a) to another Saturday as nearest as possible to the fourth anniversary of the election day on which the previous Assembly was elected or to another Saturday as nearest as possible to the Saturday referred to in section 38(2) as the case may be.

Subdivision (3)—Proceedings of the Assembly

39 Election of Speaker

Constitution
Act s. XX.

- (1) The Assembly shall at its first meeting after a general election and before proceeding to the despatch of any other business elect a member of the Assembly to be Speaker.
- (2) In case of the death resignation or removal by a vote of the Assembly of the Speaker the Assembly shall before proceeding to the despatch of any other business elect some other member to be Speaker.
- (3) The Speaker shall preside at the meetings of the Assembly except as may be provided by the standing rules and orders.

40 Quorum of Assembly

Constitution
Act s. XXI.

- (1) The Assembly shall not proceed to the dispatch of business unless there be present exclusive of the Speaker at least twenty of the members.
- (2) Subject to section 18 all questions arising in the Assembly shall be decided by a majority of members present other than the Speaker and when the votes are equal the Speaker shall have a casting vote.
- (3) The Chairman of Committees shall be the Deputy Speaker of the Assembly.

Division 7—Provisions applicable to both the Council and the Assembly

Constitution
Act s. XXIX.

41 Sessions of Council and Assembly

There shall be a session of the Council and the Assembly once at least in every year so that a period of twelve calendar months shall not intervene between the last sitting of the Council and the Assembly in one session and the first sitting of the Council and the Assembly in the next session.

Constitution
Act s. XXII.

42 Quorum of Houses may act though election may have failed

S. 42
amended by
No. 2/2003
s. 49(4).

No omission or failure to elect a member or members in or for any region or district nor the vacating of the seat or avoiding of the election of any such member or members shall be deemed or taken to make either the Council or the Assembly (as the case may be) incomplete or to invalidate any proceedings thereof or to prevent the Council or the Assembly from meeting and despatching business so long as there shall be a quorum of members present.

Constitution
Act s. XXXIV.

43 Standing rules and orders

- (1) The Council and the Assembly may from time to time make amend or vary standing rules and orders for or with respect to—
 - (a) the manner in which the Council and the Assembly shall be presided over in case of the absence of the President and Deputy President or Speaker and Deputy Speaker (as the case may be);
 - (b) the mode in which the Council and the Assembly shall communicate;

- (c) the proper passing intituling and numbering of the Bills introduced into and passed by the Council and the Assembly;
 - (d) the proper presentation of such Bills to the Governor for Her Majesty's assent and the consideration of any amendment that the Governor desires to be made;
 - (e) the due publication of all proposed proceedings in the Council and the Assembly; and
 - (f) the conduct of all business and proceedings in the Council and the Assembly severally and collectively.
- (2) A standing rule or order affecting the mode of communication between the Council and the Assembly or the proceedings of the Council and the Assembly collectively shall be of no force unless the same shall have been adopted both by the Council and the Assembly.

Subdivision (1)—Membership of the Council and the Assembly

44 Membership of the Council and the Assembly

No. 6224
ss 73, 99.

- (1) Subject to this Act, a person is qualified to be elected a member of the Council or the Assembly if, at the close of the roll in relation to the election for which the person is a candidate—
- (a) the person is enrolled on the register of electors within the meaning of the **Electoral Act 2002** and is entitled to vote at an election; and
 - (b) the person's principal place of residence is in Victoria.

S. 44(1)
amended by
No. 10146 s. 4,
substituted by
No. 23/2002
s. 189(2).

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- (2) An elector who—
- (a) is a judge of a court of Victoria;
 - (b) is a member of either House of the Parliament of the Commonwealth;
 - (c) is an undischarged bankrupt—
- shall not be qualified to be elected a member of the Council or the Assembly.
- (3) An elector who has been convicted or found guilty of an indictable offence which by virtue of any enactment is punishable upon first conviction by imprisonment for life or for a term of five years or more committed by him when of or over the age of 18 years under the law of Victoria or under the law of any other part of the British Commonwealth of Nations shall not be qualified to be elected a member of the Council or the Assembly.

Constitution
Act s. XI.
S. 44(3)
amended by
No. 9576
s. 11(1).

Constitution
Act s. XXVI.
No. 6224 s. 74.

45 Avoidance of election of unqualified person

- (1) If a person who is not qualified to be elected a member of the Council or the Assembly (as the case may be) is elected and returned as such a member the election and return shall be declared by the Court of Disputed Returns to be void.
- (2) If a person so elected and returned contrary to the provisions of this Part sits or votes in the Council or the Assembly he shall be guilty of an offence against this Act.

Penalty: \$500.

46 Vacation of seat

Constitution
Act s. XXIV.

If a member of the Council or the Assembly—

- (a) ceases to be qualified to be elected a member of the Council or the Assembly; or
- (b) fails to attend the Council or the Assembly without the permission of the Council or the Assembly (as the case may be) for one entire session—

his seat in the Council or the Assembly shall become vacant.

47 Member of Victorian Parliament elected to Federal Parliament

No. 6224 s. 48.

If a member of the Council or the Assembly is elected a member of either House of the Parliament of the Commonwealth his seat in the Council or the Assembly shall become vacant—

- (a) if a petition against the return of the member to the Parliament of the Commonwealth is not lodged within the time allowed for the lodging of such petitions, upon the expiration of the time so allowed; or
- (b) if a petition is lodged within the time allowed for the lodging of such petitions, upon the final determination of that petition in favour of the member.

Subdivision (2)—Qualification of electors for the Council and the Assembly

48 Qualification of electors for the Council and the Assembly

No. 6224
ss 76, 77, 102,
103.

S. 48
amended by
Nos 9077 s. 2,
9427
s. 6(1)(Sch. 5
item 24),
9826 s. 2,
substituted by
No. 10146 s. 5.

S. 48(1)(a)(ii)
substituted by
No. 61/1986
s. 3(a).

(1) Subject to this Act, a person who—

(a) is—

(i) an Australian citizen; or

(ii) a person (other than an Australian citizen) who would, if the relevant citizenship law had continued in force, be a British subject within the meaning of that relevant citizenship law and whose name was, at any time within the three months immediately before 26 January 1984, enrolled on—

(A) an electoral roll for an electoral district of the Assembly; or

(B) an electoral roll maintained under any one of the Commonwealth Acts known as the Commonwealth Electoral Act 1918, the Australian Capital Territory Representation (House of Representatives) Act 1973 and the Northern Territory Representation Act 1922; and

(b) is of the full age of eighteen years—

shall be entitled to enrol as an elector for the Council and the Assembly.

(2) A person who—

(a) has been convicted of treason under the law of Victoria or treason or treachery under the law of the Commonwealth or a State or Territory of the Commonwealth and has not been pardoned;

S. 48(2)
amended by
No. 23/2002
s. 189(4).

(b) is serving a sentence of 5 years imprisonment or more for an offence against the law of Victoria, the Commonwealth or another State or a Territory of the Commonwealth;

S. 48(2)(b)
substituted by
No. 23/2002
s. 189(3).

(c) is—

(i) the holder of a temporary entry permit for the purposes of the Commonwealth Act known as the Migration Act 1958;
or

(ii) a prohibited immigrant under that Act;
or

(d) by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting—

is not entitled to be enrolled as an elector for the Council or Assembly.

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S. 48(2A)
inserted by
No. 10244
s. 10,
amended by
No. 43/1996
s. 65(Sch.
item 4.1),
repealed by
No. 23/2002
s. 189(5).

(3) Any entitlement to enrolment shall be subject to compliance with any law relating to enrolment for and voting at elections for the Council or Assembly.

S. 48(5)
inserted by
No. 61/1986
s. 3(b).

- (4) Subject to this section, the Parliament may make such laws as it deems necessary or expedient for or with respect to enrolment for and voting at elections for the Council or Assembly.
- (5) In subsection (1), *relevant citizenship law* means the Australian Citizenship Act 1948 of the Commonwealth as amended and in force immediately before the day fixed by Proclamation for the purposes of section 2(2) of the Australian Citizenship Amendment Act 1984 of the Commonwealth and the regulations in force immediately before that day under the Australian Citizenship Act 1948 as so amended and in force.

Division 8—Offices and places of profit

No. 6224 s. 14.
S. 49
amended by
No. 38/2005
s. 14.

49 Public officers not to sit in Parliament except as mentioned

Except where express provision is made to the contrary by any Act or enactment no person who holds any office or place of profit under the Crown (whether in right of Victoria or any other capacity), or is in any manner employed in the public service of Victoria or of the Commonwealth for salary wages fees or emolument, shall sit or vote in the Council or the Assembly; and the election of any such person to be a member of the Council or the Assembly shall be null and void.

50 Salaried officers in Parliament

No. 6224 s. 15.

- (1) The Governor may from time to time appoint any number of officers so that the entire number shall not at any one time exceed 22 who shall be entitled to be elected members of either House of the Parliament and to sit and vote therein.
- (2) Such officers shall be responsible Ministers of the Crown and members of the Executive Council, and ten at least of such officers shall be members of the Council or the Assembly.
- (3) Not more than six of such officers shall at any one time be members of the Council and not more than 17 of such officers shall at any one time be members of the Assembly.

S. 50(1)
amended by
Nos 8834
s. 2(a),
59/1992
s. 3(a).

51 Ministers to be in Council or Assembly

No. 6224 s. 16.

A responsible Minister of the Crown shall not hold office for a longer period than three months unless he is or becomes a member of the Council or the Assembly.

52 Power of Ministers to speak in either House

No. 6224 s. 17.

- (1) Notwithstanding anything contained in any Act any responsible Minister of the Crown who is a member of the Council or of the Assembly may at any time with the consent of the House of the Parliament of which he is not a member sit in such House for the purpose only of explaining the provisions of any Bill relating to or connected with any department administered by him, and may take part in any debate or discussion therein on such Bill, but he shall not vote except in the House of which he is an elected member.
- (2) It shall not be lawful at any one time for more than one responsible Minister under the authority of this section to sit in the House of which he is not a member.

No. 6224
ss 19, 20.

53 Responsible Minister not required to vacate seat on appointment to office

- (1) Notwithstanding anything in this Act where a person is appointed by the Governor to be a responsible Minister of the Crown the acceptance by him of the appointment shall not prevent him from becoming a member of the Council or the Assembly or from sitting and voting as a member or if he is a member shall not vacate his seat.
- (2) If any person accepts more than one of the offices referred to in subsection (1), he shall not receive the salaries of more than one of such offices.

No. 6224 s. 23.

54 Contractors not to be elected

A person who is either directly or indirectly concerned or interested in any bargain or contract entered into by or on behalf of Her Majesty in right of the State of Victoria, or who participates or claims or is entitled to participate either directly or indirectly in the profit thereof or in any benefit or emolument arising from the same, shall not sit or vote in the Council or the Assembly; and the election of any such person to be a member of either the Council or the Assembly shall be void.

No. 6224 s. 24.

55 Seats to become vacant in certain cases

If any member of the Council or the Assembly—

- (a) either directly or indirectly becomes concerned or interested in any bargain or contract entered into by or on behalf of Her Majesty in right of the State of Victoria;
- (b) participates or claims or is entitled to participate either directly or indirectly in the profit of any such bargain or contract or in any benefit or emolument arising therefrom;

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- (c) becomes bankrupt or applies to take the benefit of any Act for the relief of bankrupt debtors; or
 - (d) except where otherwise expressly provided or permitted by any Act or enactment, accepts any office or place of profit under the Crown, or in any character or capacity for or in expectation of any fee gain or reward performs any duty or transacts any business whatsoever for or on behalf of the Crown—

his seat shall thereupon become vacant.

56 Reference to certain contracts in last two preceding sections

No. 6224 s. 25.

- (1) Any reference in the last two preceding sections to any bargain or contract entered into by or on behalf of Her Majesty in right of the State of Victoria shall subject to subsection (2) be deemed to include a reference to—
 - (a) any contract entered into by any Government department or by any Minister of the Crown in his capacity as such; and
 - (b) (without affecting the generality of the last preceding paragraph) any contract entered into by any public statutory body.
- (2) It is hereby declared that any such reference in the said sections does not extend to—
 - (a) the supply or provision by Her Majesty (including any department Minister or body referred to in subsection (1)) of goods chattels or services where such goods chattels or services are supplied or provided to a member of the Council or the Assembly on no better terms than they are supplied or provided to persons other than members who

- are in similar circumstances or who are otherwise similarly qualified or eligible;
- (b) any contract or agreement the benefit or burden of which or any interest in which devolves upon a member of the Council or the Assembly as beneficiary under a will or as a person entitled to share in the estate of an intestate or as executor administrator or trustee, until twelve months after such devolution;
 - (c) any isolated casual sale or supply of goods chattels or services to Her Majesty (including any department Minister or body referred to in subsection (1)) where at the time of such sale or supply the member of the Council or the Assembly concerned did not know and could not reasonably have known that such sale or supply was a sale or supply to Her Majesty (or to a department Minister or body referred to in subsection (1)); or
 - (d) any compromise in respect of any compensation or other money payable by Her Majesty (including any department Minister or body referred to in subsection (1)).

No. 6224 s. 26.

57 Certain contracts excepted

Nothing hereinbefore contained shall extend or apply to—

- (a) any bargain or contract entered into by any company partnership or association consisting of more than twenty persons where such bargain or contract is entered into for the general benefit of such company partnership or association;

- (b) any lease licence for occupation sale or purchase of any land;
- (c) any agreement for any such lease sale or purchase or for the occupation of such land or for any easement therein or for the loan of money; or
- (d) any security for the payment of money only.

58 With certain exceptions members of Parliament not to accept offices of profit under the Crown No. 6224 s. 27.

Except where express provision is made to the contrary by any Act or enactment other than this section, if any person while he is a member of the Council or the Assembly accepts any office or place of profit under the Crown other than an office as a responsible Minister of the Crown, he shall be guilty of an offence against this Act and shall be liable to a penalty of \$100 for every week that he holds such office.

59 Penalties for offences against this Division No. 6224 s. 31.

Any person who wilfully contravenes or fails to comply with any of the foregoing provisions of this Division shall be guilty of an offence against this Act.

Penalty: \$500.

60 Removal of disqualification by reason of certain naval, military or air services No. 6224 s. 28.

- (1) Notwithstanding anything in this Act or any corresponding previous enactment, the seat of a member of the Council or the Assembly shall not become vacant and shall not be deemed to have become vacant, and the election of any person to be a member of the Council or the Assembly shall not be and shall not be deemed to have been void, and no person shall be or be deemed to have been disqualified or incapable to be elected or to be or

continue a member of or incapable of sitting or voting in the Council or the Assembly, and no such member or person shall be or be deemed to have been liable to any penalty under this Act or any corresponding previous enactment by reason only that such member or person was or is an officer or member of the naval military or air forces of the Commonwealth whose services were not or are not wholly employed by the Commonwealth or received or receives any pay half-pay allowance or pension as such an officer or member of any of the said forces.

- (2) A person shall not for the purposes of this Act or any corresponding previous enactment be deemed to have accepted or to accept an office or place of profit under the Crown by reason only that such person (while he was or is a member of the Council or the Assembly) was or is or served or serves as an officer or member of any of the forces aforesaid or received or receives any pay half-pay allowance or pension as aforesaid.

61 Holders of offices etc. not to be disqualified from election to Council or Assembly

Notwithstanding anything in this Act or the **Public Administration Act 2004**, the **Education and Training Reform Act 2006**, the **Transport Act 1983**, the **Police Regulation Act 1958** or any other Act a person shall not be disqualified or disabled from or be ineligible to be a candidate at any election whether for the Council or for the Assembly or being elected or returned a member of the Council or of the Assembly by reason only of his being the holder of any office or place of profit under the Crown (whether in right of Victoria or any other capacity) or in any manner employed in the public service of Victoria or of the Commonwealth for salary wages fees or emolument and the election and return of any such

S. 61 substituted by No. 9077 s. 3, amended by Nos 9788 s. 3(1)(a), 9921 s. 255, 10029 s. 22, 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 40), 38/2005 s. 15, 24/2006 s. 6.1.2(Sch. 7 item 8.1).

person shall not be or be declared void by reason only of his holding such an office or place of profit under the Crown or being so employed; and on the election of any such person to be a member of the Council or the Assembly he shall cease to hold that office or place of profit under the Crown or to be so employed.

61A Power to Houses to relieve from consequences of alleged defaults

**S. 61A
inserted by
No. 9077 s. 4.**

(1) Notwithstanding anything in this Act where it is made to appear to the relevant House that any act matter or thing whether occurring before or after the commencement of this Act has or may have caused a person to be disqualified from election to that House or the seat of a member of that House to become vacant the relevant House may, if it is satisfied that the act matter or thing—

- (a) has ceased to have effect;
- (b) was in all the circumstances of a trifling nature; and
- (c) occurred or arose without the actual knowledge or consent of the person or was accidental or due to inadvertence—

by resolution direct that any such act matter or thing for the purposes of all or any of the provisions of this Act be deemed never to have occurred or arisen but any such resolution shall save as aforesaid not affect the determination of any petition with respect to the validity of any election or return that has been addressed to the Court of Disputed Returns.

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- (2) In any case where apart from this provision the Governor, the President of the Legislative Council or the Speaker of the Legislative Assembly would be required to issue during the recess of the relevant House a writ for election of a member of that House in the place of a member disqualified under any of the provisions of this Act the Governor, the President or the Speaker may if it appears to him that an opportunity should be given to the relevant House to consider the making of an order under subsection (1) defer the issue of the writ pending the determination of the relevant House.
- (3) In this section the *relevant House* means—
- (a) in relation to any question concerning the qualification for election of a person to the Legislative Council or a vacancy in the Legislative Council—the Legislative Council; and
 - (b) in relation to any question concerning the qualification for election of a person to the Legislative Assembly or a vacancy in the Legislative Assembly—the Legislative Assembly.

Pt 2 Div. 9
(Heading)
amended by
No. 2/2003
s. 16.

Division 9—Provisions relating to Appropriation Bills

Constitution
Act s. LVI.
S. 62
substituted by
No. 2/2003
s. 13.

62 Appropriation Bills

- (1) A Bill for appropriating any part of the Consolidated Fund or for imposing any duty, rate, tax, rent, return or impost must originate in the Assembly.

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- (2) Subject to section 65, a Bill for appropriating any part of the Consolidated Fund or for imposing any duty, rate, tax, rent, return or impost may be rejected but not altered by the Council.

63 Appropriation to be in pursuance of message¹⁰

Constitution
Act s. LVII.

S. 63
amended by
No. 13/1997
s. 4(1).

The Assembly may not pass any vote resolution or Bill for appropriating any part of the Consolidated Fund or of any duty rate tax rent return or impost for any purpose which has not been first recommended by a message of the Governor to the Assembly during the session in which such vote resolution or Bill is passed.

64 Appropriation Bills

No. 6224 s. 54.

- (1) A Bill shall not be taken to be a Bill for appropriating any part of the Consolidated Fund or for imposing any duty rate tax rent return or impost by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties or for the demand or payment or appropriation of fees for licences or fees for services under such Bill.
- (2) The Council may once at each of the undermentioned stages of a Bill which the Council cannot alter return such Bill to the Assembly suggesting by message the omission or amendment of any items or provisions therein, and the Assembly may if it thinks fit make any of such omissions or amendments with or without modifications:

Provided that the Council may not suggest any omission or amendment the effect of which will be to increase any proposed charge or burden on the people.

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- (3) The stages of a Bill at which the Council may return the Bill with a message as aforesaid shall be—
- (a) the consideration of the Bill in Committee;
 - (b) the consideration of the report of the Committee; and
 - (c) the consideration of the question that the Bill be read a third time.

No. 6224 s. 55.
S. 65
substituted by
No. 2/2003
s. 14.

65 Annual Appropriation Bills

- (1) In this section *Annual Appropriation Bill* means a Bill which deals only with the annual appropriation of the Consolidated Fund for the ordinary annual services of the Government for a particular year only but does not include a Bill to appropriate money for appropriations for or relating to the Parliament.
- (2) For the purposes of subsection (1), *ordinary annual services* includes—
- (a) the construction or acquisition of public works, land or buildings; and
 - (b) the construction or acquisition of plant or equipment which normally would be regarded as involving an expenditure of capital; and
 - (c) services proposed to be provided by the Government which have not formerly been provided by the Government.
- (3) An Annual Appropriation Bill must deal only with appropriation.

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- (4) Subsection (5) applies if an Annual Appropriation Bill is passed by the Assembly and within 1 month of its passing by the Assembly—
- (a) the Council rejects or fails to pass it; or
 - (b) the Council returns it to the Assembly with a message suggesting any amendment to which the Assembly does not agree.
- (5) If this subsection applies, the Annual Appropriation Bill, with any amendments suggested by the Council and made by the Assembly, must be presented to the Governor for Her Majesty's Assent and becomes an Act of Parliament on the Royal Assent being signified notwithstanding that the Council has not passed the Bill.
- (6) The words of enactment for an Annual Appropriation Bill that is to be presented to the Governor for Her Majesty's Assent under subsection (5) are to be altered to "Her Majesty and the Legislative Assembly in accordance with section 65(5) of the **Constitution Act 1975** enact as follows":
- (7) There is to be endorsed on the Annual Appropriation Bill when it is presented to the Governor for Her Majesty's Assent under subsection (5), the certificate of the Speaker signed by the Speaker that the Bill is a Bill to which section 65(5) of the **Constitution Act 1975** applies and has been passed in accordance with that section.
- (8) The certificate of the Speaker under this section is conclusive evidence for all purposes and cannot be questioned in any court.
- (9) The alteration of an Annual Appropriation Bill to give effect to subsection (6) is not to be taken to be an amendment of the Bill.
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Pt 2 Div 9A
(Heading and
ss 65A–65G)
inserted by
No. 2/2003
s. 15.

Division 9A—Provisions relating to disputes concerning Bills

S. 65A
inserted by
No. 2/2003
s. 15.

65A Definitions

(1) In this Division—

Deadlocked Bill means a Disputed Bill to which section 65C(3) or 65D(1) applies;

Dispute Resolution means a resolution reached by the Dispute Resolution Committee recommending to the Assembly and the Council that the Disputed Bill specified in the resolution—

- (a) be passed as transmitted by the Assembly to the Council without amendment; or
- (b) be passed with the amendment or amendments specified in the resolution; or
- (c) not be passed;

Dispute Resolution Committee means the Committee established under section 65B;

Disputed Bill means a Bill which has passed the Assembly and having been transmitted to and received by the Council not less than 2 months before the end of the session has not been passed by the Council within 2 months after the Bill is so transmitted, either without amendment or with such amendments only as may be agreed to by both the Assembly and the Council.

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- (2) For the purposes of this Division, any omission or amendment suggested by the Council in accordance with section 64 is deemed to be an amendment made by the Council.
 - (3) This Division does not apply to an Annual Appropriation Bill within the meaning of section 65.

65B Dispute Resolution Committee

S. 65B
inserted by
No. 2/2003
s. 15.

- (1) A Dispute Resolution Committee is to be established as soon as conveniently practicable after the commencement of each Parliament.
- (2) The Dispute Resolution Committee holds office for the Parliament during which it is appointed until the dissolution or other lawful determination of the Assembly.
- (3) The Dispute Resolution Committee is to consist of 12 members of whom—
 - (a) 7 are to be members of, and appointed by, the Assembly; and
 - (b) 5 are to be members of, and appointed by, the Council.
- (4) When appointing members under subsection (3), each House of the Parliament must take into account the political composition of that House.
- (5) The Dispute Resolution Committee cannot meet until both the Assembly and the Council have made the appointments referred to in subsection (3).
- (6) A member of the Dispute Resolution Committee is to be appointed by the Dispute Resolution Committee as the Chair.
- (7) Each member of the Dispute Resolution Committee is entitled to 1 vote.

s. 65C

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- (8) In the event of an equality of votes, the Chair also has a casting vote.
 - (9) The Dispute Resolution Committee—
 - (a) must meet in private; and
 - (b) subject to this Division, may determine the rules to be adopted for the conduct of meetings.

S. 65C
inserted by
No. 2/2003
s. 15.

65C Dispute Resolution

- (1) The Dispute Resolution Committee must seek to reach a Dispute Resolution on a Disputed Bill within 30 days after the Disputed Bill is referred to the Dispute Resolution Committee by a resolution of the Assembly.
- (2) If the Dispute Resolution Committee reaches a Dispute Resolution, a copy of the Dispute Resolution must be tabled in the Assembly and the Council on the first sitting day of that House after the Dispute Resolution has been reached.
- (3) If the Dispute Resolution Committee—
 - (a) cannot reach a Dispute Resolution; or
 - (b) cannot meet or fails to meet for any reason—the Disputed Bill becomes a Deadlocked Bill.

S. 65D
inserted by
No. 2/2003
s. 15.

65D Consideration of Dispute Resolution by Assembly and Council

- (1) If either the Assembly or the Council fails to give effect to the Dispute Resolution within the period of 30 days or the period of 10 sitting days (whichever period is longer) after the tabling of the Dispute Resolution in that House, the Disputed Bill becomes a Deadlocked Bill.

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- (2) For the purposes of subsection (1), the Assembly or the Council fails to give effect to the Dispute Resolution—
- (a) if the Dispute Resolution provided that the Disputed Bill be passed by the Council as transmitted by the Assembly to the Council without amendment, and the Council does not pass the Bill without amendment;
 - (b) if the Dispute Resolution provided that the Disputed Bill be passed with the amendment or amendments specified in the Dispute Resolution, and the Assembly or the Council does not pass the Bill with the specified amendment or amendments;
 - (c) if the Dispute Resolution provided that the Disputed Bill not be passed, and the Assembly or the Council resolves not to accept the Dispute Resolution.
- (3) If the Assembly or the Council has, in relation to a Bill to which section 18(1B) applies, given effect to a Dispute Resolution, it is only lawful to present the Bill to the Governor for Her Majesty's assent if the Bill has been approved by the majority of electors voting at a referendum.
- (4) If the Assembly or the Council has, in relation to a Bill to which section 18(2) or 18(2AA) applies, given effect to a Dispute Resolution, it is only lawful to present the Bill to the Governor for Her Majesty's assent if the third reading of the Bill was passed by a special majority or an absolute majority, as the case may be.

S. 65E
inserted by
No. 2/2003
s. 15.

65E Provisions applying if dispute not resolved

- (1) This section applies in the case of a Deadlocked Bill.
- (2) The Premier may advise the Governor in writing that the Assembly be dissolved as a result of this section applying to the Deadlocked Bill specified in the advice.
- (3) There is to be attached to the advice under subsection (2) a copy of the Deadlocked Bill endorsed with the certificate of the Speaker signed by the Speaker that the Bill is a Bill to which section 65E of the **Constitution Act 1975** applies.
- (4) The certificate of the Speaker under this section is conclusive evidence for all purposes and cannot be questioned in any court.
- (5) If the Premier does not give advice under subsection (2), the Deadlocked Bill may be re-introduced in the Assembly in accordance with section 65F.

S. 65F
inserted by
No. 2/2003
s. 15.

65F Provisions applying to Deadlocked Bills

- (1) This section applies if during the existence of the Assembly first elected after the previous Assembly has been dissolved under section 65E(2) or otherwise dissolved or lawfully determined, a Deadlocked Bill from the previous Assembly is again introduced in the Assembly.
- (2) For the purposes of this section, a Deadlocked Bill may be introduced in the Assembly in the form in which—
 - (a) it was introduced in the previous Assembly;
or
 - (b) it was passed by the previous Assembly and transmitted to the previous Council; or

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- (c) it is consistent with the Dispute Resolution reached in respect of the Deadlocked Bill.
- (3) If a Bill introduced in accordance with this section again becomes a Disputed Bill, the Premier may advise the Governor in writing to convene a joint sitting of the Assembly and the Council.
- (4) There is to be attached to the advice under subsection (3) a copy of the Disputed Bill endorsed with the certificate of the Speaker signed by the Speaker that the Bill is a Bill to which section 65F(3) of the **Constitution Act 1975** applies.
- (5) The certificate of the Speaker under this section is conclusive evidence for all purposes and cannot be questioned in any court.
- (6) A joint sitting of the Assembly and the Council convened in accordance with this section may consider all the Bills that are Disputed Bills in accordance with this section.

65G Joint Sitting

S. 65G
inserted by
No. 2/2003
s. 15.

- (1) A joint sitting of the Assembly and the Council convened in accordance with section 65F must consider a Disputed Bill to which that section applies in the form in which it was last passed by the Assembly and transmitted to the Council.
- (2) Subject to subsection (3), the joint sitting of the Assembly and the Council is to be conducted in accordance with the rules adopted by the members present at the joint sitting.
- (3) At the joint sitting of the Assembly and the Council—
- (a) the members have the same privileges and immunities as the members of the Assembly in relation to proceedings before that House;

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- (b) subject to subsection (4), a question is to be decided by a majority of the votes cast by the members present at the joint sitting;
- (c) in the event of an equality of votes on a question, the question is to be taken to have been determined in the negative.
- (4) If an absolute majority of the total number of the members of the Assembly and the Council passes the third reading of the Disputed Bill with or without any amendments at the joint sitting of the Assembly and the Council, the Bill so passed is to be taken to have been duly passed by both Houses of the Parliament, whether or not it is a Bill to which section 18(2) or 18(2AA) applies.
- (5) Subject to subsections (6) and (7), a Bill passed in accordance with this section must be presented to the Governor for Her Majesty's Assent and becomes an Act of Parliament on the Royal Assent being signified.
- (6) If a Bill to which section 18(1B) applies is passed in accordance with this section, it must be submitted to a referendum.
- (7) A Bill that is referred to in subsection (6) and that is approved by the majority of electors voting at a referendum must be presented to the Governor for Her Majesty's assent and becomes an Act of Parliament on the Royal Assent being signified.
- (8) There is to be endorsed on the Bill when it is presented to the Governor for Her Majesty's Assent under subsection (5) or (7), the certificate of the Speaker signed by the Speaker that the Bill is a Bill to which section 65G of the **Constitution Act 1975** applies and has been passed in accordance with that section.
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- (9) The certificate of the Speaker under this section is conclusive evidence for all purposes and cannot be questioned in any court.
- (10) If a Bill is passed in accordance with this section, the Bill is deemed for all purposes to be a Bill that has been passed by the Assembly and the Council.

* * * * *

No. 6224
s. 56(1)–(7).
Ss 66–68
amended by
No. 10106
s. 7(1)(2),
repealed by
No. 2/2003
s. 7(1).

Division 10—Acts of Parliament

69 Date of passing of Act to be endorsed by Clerk

No. 6224 s. 60.

The Clerk of the Parliaments shall indorse on every Act of the Parliament immediately after the title of such Act the day month and year when the same has received the Royal assent, and such indorsement shall be taken to be part of such Act.

S. 69(1)
amended by
Nos 10096
s. 4(4)(Sch.
item 6(b)),
108/1994
s. 6(1)(c)(i).

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S. 69(2)
repealed by
No. 108/1994
s. 6(1)(c)(ii).

70 Where the time fixed by an Act for the doing of any act etc. cannot be observed

No. 6224 s. 61.

Whenever by any Act of the Parliament a day or time is appointed fixed or indicated as the day or time on or at which any act matter or thing is to be done or effected and such day or time is antecedent to the passing of such Act and its receiving the Royal assent the Governor in Council unless the contrary is expressly enacted may by proclamation in the Government Gazette appoint or fix or indicate a day or time for doing

or effecting such act matter or thing and every such act matter or thing done or effected upon the day or time so appointed fixed or indicated shall be as good valid and effectual as if it had been done or effected on the day or at the time appointed fixed or indicated in the Act and all provisions of the Act following and dependent directly upon the doing or effecting of such act matter or thing shall be read and construed as if the date or time so appointed fixed or indicated by the Governor in Council had been the date appointed fixed or indicated in the Act.

No. 6224 s. 62.

71 Where Bill for continuing Act which expires during the session does not pass

Where in any session any Bill is introduced into either the Council or the Assembly for the continuance of any Act which would expire in such session and such Act has expired before the Bill for continuing the same has received the Royal assent such continuing Act shall be deemed and taken to have effect from the expiration of the Act intended to be continued as fully and effectually to all intents and purposes as if such continuing Act had actually passed before the expiration of the Act intended to be continued unless otherwise specially provided in such continuing Act: Provided that nothing herein contained shall extend or be construed to extend to affect any person with any punishment penalty or forfeiture whatsoever by reason of any thing done or omitted to be done by any such person contrary to the provisions of the Act so continued between the expiration of the same and the date on which the Act continuing the same receives the Royal assent.

**Division 11—Publication, transmission and broadcasting of
Parliamentary proceedings**

Pt 2 Div. 11
(Heading)
amended by
No. 95/1997
s. 3(a).

72 Government Printer

No. 6224 s. 63.

(1) There continues to be a Government Printer for Victoria.

S. 72(1)
substituted by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 114.

(1A) The person who is for the time being employed under Part 3 of the **Public Administration Act 2004** as Chief Parliamentary Counsel is also the Government Printer without the need for any further appointment.

S. 72(1A)
inserted by
No. 108/2004
s. 114.

(2) The Government Printer shall be deemed to be and always to have been authorized by each House of the Parliament to publish the reports of debates in each such House and to publish extracts from the reports of such debates.

**73 Publication of reports, proceedings etc. of either
House of Parliament protected**

No. 6224 s. 64.

(1) Any person who is defendant, accused or respondent in any civil criminal or mixed proceeding commenced or prosecuted in any manner whatsoever for or on account or in respect of the publication, in written or electronic form, of any report paper votes or proceedings of the Houses of the Parliament or either of them or of any committee of such Houses or either of them by such person or by his officer or servant by or under the authority of such Houses or either of them or of any committee of such Houses or either of them may bring before the court in which such proceeding has been or is so commenced or prosecuted, first giving twenty-four hours notice of his intention so to do to the prosecutor or

S. 73(1)
amended by
Nos 57/1989
s. 3(Sch.
item 28.1),
95/1997
s. 3(b)(i),
68/2009
s. 97(Sch.
item 25.1).

plaintiff in such proceeding, a certificate under the hand of the President or of the Speaker or under the hands of the President and the Speaker or under the hand of the Clerk of the Parliaments or of the Clerk of the Council or of the Clerk of the Assembly (as the case may require) stating that the report paper votes or proceedings (as the case may be) in respect whereof such proceeding has been commenced or prosecuted was published by such person or by his officer or servant by order or under the authority of such Houses or either of them or of any committee of such Houses or either of them together with an affidavit verifying such certificate.

S. 73(2)
amended by
No. 57/1989
s. 3(Sch.
item 28.2).

(2) The court shall thereupon immediately stay such proceeding; and the same and every writ or process issued therein shall be determined and superseded by virtue of this Act.

S. 73(3)
amended by
No. 95/1997
s. 3(b)(ii).

(3) In this and the next succeeding section any reference to the publication of proceedings of either House of the Parliament shall include and shall be deemed always to have included a reference to the publication, in written or electronic form, of the reports of debates in either such House and to the publication, in written or electronic form, of extracts from such reports.

No. 6224 s. 65.

74 Copy of authenticated report thereof

S. 74(1)
amended by
Nos 57/1989
s. 3(Sch.
item 28.3),
95/1997
s. 3(c),
68/2009
s. 97(Sch.
item 25.2).

(1) In any civil criminal or mixed proceeding for or on account or in respect of the publication, in written or electronic form, of any copy of such report paper votes or proceedings the defendant or accused at any stage of the proceeding may lay before the court such report paper votes or proceedings and such copy, with an affidavit verifying such report paper votes or proceedings and the correctness of such copy.

- (2) The court shall immediately stay such proceeding; and the same and every writ or process issued therein shall be determined and superseded by virtue of this Act. **S. 74(2) amended by No. 57/1989 s. 3(Sch. item 28.4).**
- (3) It shall be lawful, in any civil criminal or mixed proceeding for printing any abstract of such report paper votes or proceedings, to give in evidence such report paper votes or proceedings, and to show that such abstract was published bona fide and without malice; and if such is the opinion of the judge or of the jury (as the case may be) in any such proceeding a judgment or a verdict (as the case may require) shall be entered for the defendant or accused. **S. 74(3) amended by No. 68/2009 s. 97(Sch. item 25.3).**

74AA Transmission and broadcasting of Parliamentary proceedings

S. 74AA inserted by No. 95/1997 s. 4.

No action or proceeding, civil, criminal or mixed, lies against a person who—

- (a) transmits or broadcasts by electronic means any proceedings—
- (i) of the Council or the Assembly, or both of them; or
 - (ii) of a committee of the Council or the Assembly, or both of them; or
- (b) broadcasts or re-broadcasts by electronic means a recording of any proceedings—
- (i) of the Council or the Assembly, or both of them; or
 - (ii) of a committee of the Council or the Assembly, or both of them—

with the authority of the Council, Assembly or committee (as the case requires).

Constitution Act 1975
No. 8750 of 1975

s. 74AB

S. 74AB
inserted by
No. 40/2001
s. 3,
repealed by
No. 40/2001
s. 5.¹¹

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PART IIA—LOCAL GOVERNMENT

Pt 2A
(Heading and
ss 74A–74D)
inserted by
No. 9254
s. 2(c),
amended by
Nos 9576
s. 11(1), 9870
ss 2, 3(a)–(e),
9937 s. 2,
substituted as
Pt 2A
(Heading and
ss 74A, 74B)
by No.
55/1988 s. 3.

74A Local government

S. 74A
substituted by
No. 55/1988
s. 3.

(1) Local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

S. 74A(1)
substituted by
No. 2/2003
s. 18.

(1A) Subject to section 74B, each Council—

S. 74A(1A)
inserted by
No. 2/2003
s. 18.

(a) is responsible for the governance of the area designated by its municipal boundaries; and

(b) is constituted by democratically elected Councillors as the governing body which is—

(i) accountable for its decisions and actions; and

(ii) responsible for ensuring good governance; and

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- (c) includes an administration which—
 - (i) implements the decisions of the Council; and
 - (ii) facilitates the performance of the duties and functions of the Council.
 - (2) An elected Council does not have to be constituted in respect of any area in Victoria—
 - (a) which is not significantly and permanently populated; or
 - (b) in which the functions of local government are carried out by or under arrangements made by a public statutory body which is carrying on large-scale operations in the area.

S. 74B
substituted by
No. 55/1988
s. 3.

74B Local government laws

- (1) Parliament may make any laws it considers necessary for or with respect to—
 - (a) the constitution of Councils; and
 - (b) the objectives, functions, powers, duties and responsibilities of Councils; and
 - (c) entitlement to vote and enrolment for elections of Councils; and
 - (d) the conduct of and voting at elections of Councils; and
 - (e) the counting of votes at elections of Councils; and
 - (f) the qualifications to be a Councillor; and
 - (g) the disqualification of a person from being or continuing to be a Councillor; and

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- (h) the powers, duties and responsibilities of Councillors and Council staff; and
 - (i) any other act, matter or thing relating to local government administration.
- (2) A Council cannot be dismissed except by an Act of Parliament relating to the Council.
- (3) Parliament may make laws for or with respect to—
- (a) the suspension of a Council; and
 - (b) the administration of a Council during a period in which the Council is suspended or dismissed; and
 - (c) the re-instatement of a Council which has been suspended; and
 - (d) the election of a Council if a suspended Council is not re-instated; and
 - (e) the election of a Council where a Council has been dismissed.
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**PART III—THE SUPREME COURT OF THE STATE OF
VICTORIA**

No. 6387 s. 6.

75 Supreme Court of the State of Victoria¹²

(1) A Court shall be held in and for Victoria and its dependencies which shall be styled "The Supreme Court of the State of Victoria" which in this Part is called "the Court".

S. 75(2)
amended by
Nos 9959 s. 2,
110/1986
s. 132(a),
substituted by
No. 109/1994
s. 5,
amended by
No. 24/2008
s. 4(1).

(2) The Court consists of the Judges of the Court and the Associate Judges of the Court.

S. 75(3)
substituted by
No. 109/1994
s. 5.

(3) The Judges of the Court are—

- (a) the Chief Justice;
- (b) the President of the Court of Appeal;
- (c) such number of other Judges of Appeal as are from time to time appointed;
- (d) such number of other Judges as are from time to time appointed.

S. 75(4)
substituted by
Nos 110/1986
s. 132(b),
109/1994 s. 5,
24/2008
s. 4(2).

(4) The Associate Judges of the Court are the Associate Judges appointed from time to time under section 104 of the **Supreme Court Act 1986**, including an Associate Judge who is the Senior Master.

S. 75(5)
repealed by
No. 109/1994
s. 5.

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S. 75(6)
inserted by
No. 8951
s. 5(6),
amended by
No. 110/1986
s. 132(c),
repealed by
No. 109/1994
s. 5.

75A Divisions of Court¹³

S. 75A
inserted by
No. 109/1994
s. 6.

- (1) The Court is divided into—
 - (a) the Court of Appeal; and
 - (b) the Trial Division.
- (2) The Court of Appeal consists of—
 - (a) the Chief Justice, who is the senior member of the Court of Appeal;
 - (b) the President of the Court of Appeal;
 - (c) the other Judges of Appeal;
 - (d) the additional Judges of Appeal appointed or acting under section 80B.

- (2A) The Court of Appeal may be constituted by an Associate Judge in the case of a proceeding for which provision is made by an Act or enactment or by rules of court for the Court of Appeal to be so constituted.

S. 75A(2A)
inserted by
No. 24/2007
s. 10(1),
amended by
No. 24/2008
s. 5(a).

- (3) The Trial Division consists of—
 - (a) the Chief Justice;
 - (b) the other Judges of the Court referred to in section 75(3).

- (4) The Trial Division may be constituted by an Associate Judge in the case of a proceeding for which provision is made by an Act or enactment or by rules of court for the Court or the Trial Division to be so constituted.

S. 75A(4)
amended by
No. 24/2008
s. 5(b).

s. 75B

S. 75B
inserted by
No. 109/1994
s. 6.

75B Qualification and appointment of Judges

S. 75B(1)
substituted by
No. 66/2003
s. 3,
amended by
No. 24/2008
s. 6(a).

- (1) A person is not eligible for appointment as a Judge of the Court unless he or she—
 - (a) is or has been a judge 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) has been admitted to legal practice in Victoria, another State, the Northern Territory or the Australian Capital Territory, or has been enrolled as a legal practitioner of the High Court of Australia, for not less than 5 years.
- (2) The Judges of the Court shall be appointed by the Governor by commission with the advice of the Executive Council.

S. 75B(2)
amended by
Nos 24/2007
s. 8(1),
24/2008
s. 6(b).

No. 6387 s. 14.

76 Court to be a court of record and to have a seal

The Court shall be a court of record, and shall have and use as occasion may require a seal bearing an impression of the Royal Arms having inscribed thereon the words "The seal of the Supreme Court of the State of Victoria"; and such seal shall be kept in the custody of the Chief Justice of the Court.

77 Commissions of Judges

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| (1) The commissions of the Judges of the Court shall subject to subsection (4) continue and remain in full force notwithstanding the demise of Her Majesty any law usage or practice to the contrary hereof in anywise notwithstanding. | Constitution Act s. XXXVIII. 12 and 13 Will. III c. 2 s. 3. 1 Geo. III c. 23 ss 1, 2. S. 77(1) amended by No. 16/2005 s. 5(1). |
| (2) The salaries of such Judges as set out in section 82 shall be paid to each of them so long as their commissions remain in force respectively. | Constitution Act s. XXXIX. |
| (3) A person who has attained the age of 70 years shall not be appointed a Judge of the Court. | No. 6389 s. 7. S. 77(3) amended by No. 16/1986 s. 4(a). |
| (3A) Subsection (3) applies to the appointment as President of the Court of Appeal or as a Judge of Appeal of a judge appointed before the commencement of section 4 of the Courts Amendment Act 1986 as if the reference to 70 years were a reference to 72 years. | S. 77(3A) inserted by No. 109/1994 s. 7(1). |
| (4) The commission of a judge ceases to be in force and the office becomes vacant— | S. 77(4) substituted by No. 16/1986 s. 4(b). |
| (aaa) on the judge being removed from office by the Governor in Council in accordance with Part IIIAA; or | S. 77(4)(aaa) inserted by No. 16/2005 s. 5(2) (as amended by No. 14/2006 s. 12). |
| (aa) on the abolition of the office of the judge by or under an Act; or | S. 77(4)(aa) inserted by No. 16/2005 s. 5(2) (as amended by No. 14/2006 s. 12). |

s. 78

S. 77(4)(a)
amended by
No. 14/2006
s. 4(1).

(a) in the case of a judge appointed before the commencement of section 4 of the **Courts Amendment Act 1986** who did not make an election under section 80A before the commencement of section 3 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005**—upon the judge attaining the age of 72 years; or

S. 77(4)(b)
amended by
No. 14/2006
s. 4(2).

(b) in the case of a judge appointed before the commencement of section 4 of the **Courts Amendment Act 1986** who made an election under section 80A before the commencement of section 3 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005**—upon the judge attaining the age of 70 years; or

S. 77(4)(c)
amended by
Nos 109/1994
s. 7(2),
14/2006
s. 4(3).

(c) in the case of a judge appointed on or after the commencement of section 4 of the **Courts Amendment Act 1986**—upon the judge attaining the age of 70 years; or

S. 77(4)(d)
inserted by
No. 109/1994
s. 7(2),
amended by
No. 24/2007
s. 8(2).

(d) in the case of a judge to whom subsection (3A) applies, upon the judge attaining the age of 72 years; or

S. 77(4)(e)
inserted by
No. 24/2007
s. 8(3).

(e) on the resignation in writing of the judge at any time before attaining the age specified in whichever of paragraphs (a), (b), (c) or (d) is applicable to the judge.

No. 6387 s. 8.
S. 78
amended by
No. 109/1994
s. 8.

78 Chief Justice

The Chief Justice shall be styled "The Chief Justice of the Supreme Court of the State of Victoria", and until Her Majesty's pleasure is known he shall have rank and precedence above and before all persons whomsoever in Victoria excepting the Governor and Lieutenant-Governor thereof.

78A Chief Justice and Judges of Court of Appeal

A Judge may be appointed to be the Chief Justice, the President of the Court of Appeal or a Judge of Appeal either at the time of appointment as a Judge of the Court or, by further commission, at any later time.

S. 78A
inserted by
No. 109/1994
s. 9.

78B Seniority

- (1) The President of the Court of Appeal is senior to all other Judges of the Court apart from the Chief Justice.
- (2) The Judges of Appeal have seniority after the President of the Court of Appeal and have seniority in relation to each other according to the dates of their commissions as Judges of Appeal.
- (3) The other Judges of the Court have seniority after the Judges of Appeal and have seniority in relation to each other according to the dates of their commissions as Judges of the Court.
- (4) If—
 - (a) the commissions of 2 or more Judges of Appeal; or
 - (b) the commissions of 2 or more other Judges of the Court—

S. 78B
inserted by
No. 109/1994
s. 9.

bear the same date, then, subject to this section, the Judges have seniority according to the seniority assigned by the commissions or, if there is no such assignment, according to the order of their being sworn.

79 Governor in Council may appoint Acting Chief Justice

No. 6387 s. 9.

- (1) When and so often as the Chief Justice for the time being is absent on leave or in consequence of sickness or for any reason is temporarily unable to perform the duties of his office, the Governor in

S. 79(1)
amended by
No. 109/1994
s. 10.

s. 79A

Council may, if he thinks fit, appoint a Judge of the Court to be Acting Chief Justice thereof for the period during which the said Chief Justice is temporarily absent or unable to perform the duties of his office and for no longer.

S. 79(1A)
inserted by
No. 66/2003
s. 4.

(1A) The Governor in Council may, when there is, or is about to be, a vacancy in the office of Chief Justice, appoint a Judge of the Court to be Acting Chief Justice for a period not exceeding 6 months.

S. 79(2)
amended by
No. 109/1994
s. 10.

(2) Any Judge so appointed to be Acting Chief Justice shall during the period of his appointment as Acting Chief Justice have the same powers and jurisdiction as the Chief Justice.

S. 79A
inserted by
No. 109/1994
s. 11.

79A Governor in Council may appoint acting President

(1) When and so often as the President of the Court of Appeal is absent on leave or in consequence of sickness or for any reason is temporarily unable to perform the duties of the office, the Governor in Council may, if the Governor in Council thinks fit, appoint a Judge of Appeal to be Acting President for the period during which the President is temporarily absent or unable to perform the duties of the office and for no longer.

S. 79A(1A)
inserted by
No. 66/2003
s. 5.

(1A) The Governor in Council may, when there is, or is about to be, a vacancy in the office of President of the Court of Appeal, appoint a Judge of Appeal to be Acting President for a period not exceeding 6 months.

(2) A Judge of Appeal so appointed to be Acting President of the Court of Appeal has the same powers and jurisdiction as the President.

80 Filling vacancies

No. 6387 s. 10.

If by reason of death resignation or removal or otherwise the office of a Judge of the Court becomes vacant a new Judge may be appointed by the Governor in Council.

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S. 80A
inserted by
No. 16/1986
s. 5(1),
amended by
Nos 4/1987
s. 3(2),
64/1990
s. 20(Sch.
item 1.1),
43/1991
s. 40(1),
109/1994 s. 12,
9/1995 s. 7(1)-
(4)(c), 22/1995
s. 16, 35/1996
s. 453(Sch. 1
item 11.1,
11.2, 1/2000
s. 3(1),
repealed by
No. 3/2005
s. 3.

80B Additional Judges of Appeal

S. 80B
inserted by
No. 109/1994
s. 13.

- (1) When and so often as the President of the Court of Appeal or a Judge of Appeal is absent on leave or in consequence of sickness or for any other reason is temporarily unable to perform the duties of the office, the Governor in Council may, by commission, appoint a Judge of the Court to act as an additional Judge of Appeal for such period, not exceeding 6 months, as is specified in the commission.
- (2) If the President of the Court of Appeal with the concurrence of the Chief Justice, determines that a Judge of the Court should act as an additional Judge of Appeal for a period, not exceeding 6 months, the Chief Justice must nominate a Judge of the Court to act as a Judge of Appeal and, if

that Judge is willing, the Judge may act as an additional Judge of Appeal for that period.

- (3) If—
- (a) the President of the Court of Appeal with the concurrence of the Chief Justice, determines that it is expedient that a specified Judge of the Court should act as an additional Judge of Appeal in a specified proceeding before the Court of Appeal; and
 - (b) the Judge of the Court is willing to act as an additional Judge of Appeal in that proceeding—

the Judge may act as an additional Judge of Appeal for the purposes of the proceeding.

- (4) An additional Judge of Appeal appointed or otherwise acting as such a Judge under this section is deemed to hold office as an additional Judge of Appeal for all purposes and, while so acting, has the same powers and jurisdiction as a Judge of Appeal.
- (5) A Judge of the Court who, under this section, has been appointed or has otherwise acted as an additional Judge of Appeal may attend the Court of Appeal for the purpose of giving judgment in, or otherwise completing, any proceeding heard by that Court while the Judge was so appointed or so acted, notwithstanding that the Judge is no longer an additional Judge of Appeal.

S. 80C
inserted by
No. 12/2001
s. 3.

80C Additional Judges of Trial Division

- (1) If the Chief Justice, with the concurrence of the President of the Court of Appeal, determines that a Judge of Appeal should act as an additional Judge of the Trial Division for a period, not exceeding 6 months, the President must nominate a Judge of Appeal to act as a Judge of the Trial Division and, if that Judge is willing, the Judge

may act as an additional Judge of the Trial Division for that period.

(2) If—

- (a) the Chief Justice, with the concurrence of the President of the Court of Appeal, determines that it is expedient that a specified Judge of Appeal should act as an additional Judge of the Trial Division in a specified proceeding before the Trial Division; and
- (b) the Judge of Appeal is willing to act as an additional Judge of the Trial Division in that proceeding—

the Judge may act as an additional Judge of the Trial Division for the purposes of the proceeding.

(3) A Judge of Appeal who, under this section, has acted as an additional Judge of the Trial Division may attend the Trial Division for the purposes of giving judgment in, or otherwise completing, any proceeding heard by the Trial Division while the Judge so acted, notwithstanding that the Judge is no longer an additional Judge of the Trial Division.

80D Appointment of acting Judges

- (1) The Governor in Council may appoint as many acting Judges of the Court as are necessary for transacting the business of the Court.
- (2) A person is not eligible for appointment as an acting Judge 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

S. 80D
inserted by
No. 3/2005
s. 4.

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- (ii) a court of Victoria or of another State or of the Northern Territory or the Australian Capital Territory; or
- (b) has not attained the age of 70 years and has been admitted to legal practice in Victoria, another State, the Northern Territory or the Australian Capital Territory, or has been enrolled as a legal practitioner of the High Court of Australia, for not less than 5 years.
- (3) The instrument of appointment of a person as an acting Judge must specify the terms and conditions of appointment.
- (4) The Attorney-General may from time to time, by notice in writing, require an acting Judge to undertake the duties of a Judge on a full time or sessional basis.
- (5) The Attorney-General does not have the power to revoke or amend a notice given under subsection (4).
- (6) An acting Judge of the Court—
- (a) has the same powers and jurisdiction as a Judge of the Court;
 - (b) is eligible for re-appointment as an acting Judge of the Court;
 - (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 Judge of the Court covered by subsection (2)(a), 75 years—whichever is the sooner;
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- (d) may only be removed from office in the same way and on the same grounds as a Judge of the Court is liable to be removed from office.
- (7) Subject to subsection (8), each acting Judge of the Court, required to undertake the duties of a Judge on a full time basis, shall be paid a salary at a rate no less than the rate for the time being applicable under the **Judicial Salaries Act 2004** to the holder of that office on other than an acting basis.
- (8) If an acting Judge of the Court, who is required to undertake the duties of a Judge 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 Judge is entitled shall be deducted from the salary payable to that acting Judge under subsection (7).
- (9) Subject to subsection (10), each acting Judge of the Court, required to undertake the duties of a judge on a sessional basis, shall be paid the sessional rate for the time being applicable under the **Judicial Salaries Act 2004** to the holder of that office.
- (10) An acting Judge of the Court who is required to undertake the duties of a Judge 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
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s. 80D

(b) because he or she has held a public office in another jurisdiction, a non-contributory pension under any other law—

shall be paid a salary calculated in accordance with the following formula—

$$S - \left(\frac{P}{235} \right)$$

where—

S means the sessional rate for the time being applicable under the **Judicial Salaries Act 2004** to the acting Judge of the Court;

P means the annual pension to which the acting Judge is entitled that is referred to in paragraph (a) or (b).

(11) Each acting Judge of the Court 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**.

S. 80D(11A)
inserted by
No. 83/2008
s. 4(1).

(11A) An acting Judge of the Court may by notice in writing to the Attorney-General enter into an arrangement under which the acting Judge agrees to receive the whole or part of his or her total amount of future salary (whether or not payable at a sessional rate) as non-salary benefits of an equivalent value.

S. 80D(11B)
inserted by
No. 83/2008
s. 4(1).

(11B) 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.

S. 80D(11C)
inserted by
No. 83/2008
s. 4(1).

(11C) An acting Judge of the Court may vary or revoke a notice he or she has given under subsection (11A) by notice in writing to the Attorney-General.

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- (11D) 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. **S. 80D(11D) inserted by No. 83/2008 s. 4(1).**
- (12) Except as provided by section 83(6)(aa), service as an acting Judge of the Court does not count as service in the office of Judge of the Court for the purposes of section 83.
- (13) Except with the approval of the Attorney-General, an acting Judge of the Court 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 Judge.
- (14) The following are to be paid out of the Consolidated Fund, which is appropriated to the necessary extent—
- (a) the amounts (including the amount of any non-salary benefits) payable to or for acting Judges of the Court; and **S. 80D(14)(a) amended by No. 83/2008 s. 4(2).**
 - (b) premiums and other amounts payable under the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of those acting Judges; and
 - (c) payroll tax payable under the **Payroll Tax Act 2007** in respect of wages paid or payable to those acting Judges; and **S. 80D(14)(c) amended by No. 24/2008 s. 7(a).**
 - (d) tax payable under the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of fringe benefits provided to those acting Judges.
- (15) If, before the commencement of section 4 of the **Salaries Legislation Amendment (Salary Sacrifice) Act 2008** (the **2008 Act**), an acting Judge of the Court entered into an arrangement under which the acting Judge agreed to receive the whole or part of his or her total amount of salary **S. 80D(15) inserted by No. 83/2008 s. 4(3).**
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s. 80E

(whether or not payable at a sessional rate) as an acting Judge as non-salary benefits of an equivalent value, that arrangement, by virtue of this subsection, has and is deemed always to have had full effect according to its tenor as if it had been authorised under this section.

S. 80D(16)
inserted by
No. 83/2008
s. 4(3).

(16) On and after the commencement of section 4 of the 2008 Act, an arrangement referred to in subsection (15) may only be varied or revoked in accordance with subsection (11C).

S. 80D(17)
inserted by
No. 83/2008
s. 4(3).

(17) In subsection (11A), *non-salary benefits* has the same meaning as it has in clause 3(5) of Schedule 1A to the **Public Administration Act 2004**.

S. 80E
inserted by
No. 3/2005
s. 4.

80E Transitional provision—reserve Judges

The repeal of section 80A by section 3 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005** does not affect an election or appointment made under section 80A before the commencement of section 3 of that Act and a Judge who has made such an election or been so appointed and who holds the office of Judge immediately before that commencement continues in that office subject to section 80A as if section 80A had not been repealed.

S. 81
amended by
No. 109/1994
s. 14,
repealed by
No. 3/2005
s. 3.

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82 Salaries, allowances and pensions of Judges of the Supreme Court

S. 82
amended by
Nos 8853
s. 2(a)(b), 9063
s. 2(a)(b), 9176
s. 2(a)(b), 9293
s. 2(a)(b),
substituted by
No. 9468
s. 2(a).

(1) The Chief Justice shall be paid a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**.

S. 82(1)
amended by
Nos 9813
s. 2(a), 4/1987
s. 3(1)(a)(i)–
(iv), 64/1990
s. 20(Sch.
item 1.2(a)),
22/1995
s. 17(1)(a)(b),
4/2002
s. 12(1)(a)(i),
38/2004
s. 12(1).

(1A) The President of the Court of Appeal shall be paid a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**.

S. 82(1A)
inserted by
No. 109/1994
s. 15(1) (as
amended by
No. 22/1995
s. 29(3)(a)),
amended by
Nos 22/1995
s. 17(2),
95/1997
s. 6, 4/2002
s. 12(1)(a)(ii),
38/2004
s. 12(2).

S. 82(1B)
inserted by
No. 109/1994
s. 15(1) (as
amended by
No. 22/1995
s. 29(3)(b)),
amended by
Nos 22/1995
s. 17(2),
95/1997
s. 6, 19/2001
s. 10, 4/2002
s. 12(1)(a)(ii),
38/2004
s. 12(3).

(1B) Each Judge of Appeal shall be paid a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**.

S. 82(2)
amended by
Nos 9813
s. 2(b), 4/1987
s. 3(1)(b)(i)–
(iv), 64/1990
s. 20(Sch.
item 1.2(b)),
109/1994
s. 15(2),
22/1995
s. 17(3)(a)(b),
4/2002
s. 12(1)(a)(i),
38/2004
s. 12(4).

(2) Each other Judge of the Court shall be paid a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**.

S. 82(3)
substituted by
Nos 9813 s. 3,
4/1987
s. 3(1)(c),
amended by
Nos 64/1990
s. 20(Sch.
item 1.2(c)(i)–
(iv)), 109/1994
s. 15(3)(4)(a),
substituted by
No. 22/1995
s. 17(4),
amended by
No. 4/2002
s. 12(1)(a)(ii),
substituted by
No. 38/2004
s. 12(5).

(3) Each Judge of the Court 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**.

(4) A Judge of the Court may by notice in writing to the Attorney-General enter into an arrangement under which the Judge agrees to receive the whole or part of his or her total amount of future salary as non-salary benefits of an equivalent value.

S. 82(4) substituted by Nos 9813 s. 3, 4/1987 s. 3(1)(c), amended by Nos 64/1990 s. 20(Sch. item 1.2(d) (i)-(viii)), 109/1994 s. 15(4)(b)(c), repealed by No. 22/1995 s. 17(5)(a), new s. 82(4) inserted by No. 83/2008 s. 3(1).

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S. 82(4A) Inserted by No. 9813 s. 3, repealed by No. 4/1987 s. 3(1)(c).

(5) 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.

S. 82(5) substituted by No. 4/1987 s. 3(1)(c), amended by Nos 64/1990 s. 20(Sch. item 1.2(e)), 109/1994 s. 15(4)(a), repealed by No. 22/1995 s. 17(5)(a), new s. 82(5) inserted by No. 83/2008 s. 3(1).

(5A) A Judge of the Court may vary or revoke a notice he or she has given under subsection (4) by notice in writing to the Attorney-General.

S. 82(5A) inserted by No. 83/2008 s. 3(1).

s. 82

S. 82(6)
substituted by
No. 4/1987
s. 3(1)(c),
amended by
Nos 64/1990
s. 20(Sch.
item 1.2(e)),
109/1994
s. 15(4)(c),
repealed by
No. 22/1995
s. 17(5)(a),
new s. 82(6)
inserted by
No. 83/2008
s. 3(1).

(6) 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.

S. 82(6A)
inserted by
No. 4/1987
s. 3(1)(c),
amended by
No. 109/1994
s. 15(4)(d),
repealed by
No. 22/1995
s. 17(5)(a).

* * * * *

S. 82(6B)
inserted by
No. 4/1987
s. 3(1)(c),
amended by
Nos 109/1994
s. 15(4)(a),
22/1995
s. 17(5)(b).

(6B) Nothing in this section authorises the salaries or the aggregate value of the allowances payable to the Chief Justice, the President of the Court of Appeal, the Judges of Appeal and the other Judges of the Court to be reduced.

S. 82(6C)
inserted by
No. 83/2008
s. 3(2).

(6C) An arrangement referred to in subsection (4) or (7A) does not constitute and is deemed never to have constituted a reduction in the salary of the Judge of the Court who enters or entered into the arrangement.

(7) The following are to be paid out of the Consolidated Fund, which is appropriated to the necessary extent—

S. 82(7) amended by Nos 64/1990 s. 20(Sch. item 1.2(f)), 22/1995 s. 17(5)(c), substituted by No. 1/2000 s. 3(2).

(a) the salaries (including the amount of any non-salary benefits) and allowances payable under this section; and

S. 82(7)(a) amended by No. 83/2008 s. 3(3).

(b) premiums and other amounts payable under the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of the Judges of the Court; and

(c) payroll tax payable under the **Payroll Tax Act 2007** in respect of wages paid or payable to the Judges of the Court; and

S. 82(7)(c) amended by No. 24/2008 s. 7(b).

(d) tax payable under the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of fringe benefits provided to the Judges of the Court.

(7A) If, before the commencement of section 3 of the **Salaries Legislation Amendment (Salary Sacrifice) Act 2008** (the *2008 Act*), a Judge of the Court entered into an arrangement under which the Judge agreed to receive the whole or part of his or her total amount of salary as a Judge as non-salary benefits of an equivalent value, that arrangement, by virtue of this subsection, has and is deemed always to have had full effect according to its tenor as if it had been authorised under this section.

S. 82(7A) inserted by No. 83/2008 s. 3(4).

(7B) On and after the commencement of section 3 of the 2008 Act, an arrangement referred to in subsection (7A) may only be varied or revoked in accordance with subsection (5A).

S. 82(7B) inserted by No. 83/2008 s. 3(4).

s. 83

S. 82(8)
repealed by
No. 64/1990
s. 20(Sch.
item 1.2(g)).

S. 82(9)
inserted by
No. 16/1986
s. 5(2),
amended by
No. 14/2006
s. 5.

S. 82(10)
inserted by
No. 83/2008
s. 3(5).

No. 6387 s. 12.
S. 83
(Heading)
inserted by
No. 23/2008
s. 6(1).

S. 83(1)
amended by
No. 9468
s. 2(b).

S. 83(1)(a)
substituted by
No. 22/1995
s. 18(1).

S. 83(1)(a)(ii)
amended by
No. 39/2003
s. 3(1)(a).

S. 83(1)(a)(iii)
inserted by
No. 39/2003
s. 3(1)(b),
amended by
No. 38/2008
s. 3.

* * * * *

(9) This section does not apply to a Judge who made an election under section 80A before the commencement of section 3 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005**.

(10) In subsection (4), *non-salary benefits* has the same meaning as it has in clause 3(5) of Schedule 1A to the **Public Administration Act 2004**.

83 As to pensions of Judges of the Supreme Court and their partners and children

(1) Every Judge of the Court who—

(a) has attained—

(i) the age of 65 years; or

(ii) in the case of a Judge appointed as a Judge of the Court before the commencement of section 18 of the **Judicial Remuneration Tribunal Act 1995**, the age of 60 years; or

(iii) in the case of a Judge to whom subsection (6)(b) or (6)(ba) applies who was appointed as a Judge of the Court after the commencement of section 18 of the **Judicial Remuneration**

Tribunal Act 1995 but who before that commencement had service that, by force of that subsection, counts as service in the office of Judge of the Court, the age of 60 years—

and has served for not less than 10 years in the office of Judge of the Court; or

(aa) has served for not less than 20 years in the office of Judge of the Court; or

S. 83(1)(aa)
inserted by
No. 22/1995
s. 18(1).

(b) having been appointed before he attained the age of sixty years has become afflicted with some permanent incapacity disabling him from the due execution of his office—

shall upon resignation or retirement from his office be entitled to a pension payable fortnightly at the rate per annum of 60 per centum of the annual salary for the time being applicable to the office that he held immediately before his retirement.

(1A) A Judge of the Court who—

(a) had attained the age of 60 years when appointed as a Judge of the Court; and

(b) has attained the age of 70 years—

is entitled upon resignation or retirement from office to a pension payable fortnightly at the proportion of the rate of the pension that would have been payable if he or she had served 10 years that is equal to the proportion of 10 years served as a Judge.

S. 83(1A)
inserted by
No. 22/1995
s. 18(2).

(1B) A Judge of the Court who—

(a) had attained the age of 60 years when appointed as a Judge of the Court; and

S. 83(1B)
inserted by
No. 22/1995
s. 18(2).

(b) has become afflicted with some permanent incapacity disabling him or her from the due execution of his or her office—

is entitled, upon resignation or retirement from office, to a pension payable fortnightly at the rate of the pension that would have been payable under subsection (1A) if he or she had served until attaining the age of 70 years.

S. 83(1C)
inserted by
No. 14/2006
s. 6,
amended by
No. 24/2007
s. 8(4).

(1C) A Judge of the Court who—

(a) was appointed as a Judge of the Court before the commencement of section 16 of the **Judicial Remuneration Tribunal Act 1995**; and

(b) has served for not less than 10 years in the office of Judge of the Court; and

(c) has attained the age of 60 years—

may resign in writing from his or her office before attaining the age of 65 years and then on attaining the age of 65 years shall be entitled to a pension payable fortnightly at the rate per annum of 60 per centum of the annual salary for the time being applicable to the office that he or she held immediately before his or her resignation.

S. 83(1D)
inserted by
No. 24/2007
s. 9(1).

(1D) A person who—

(a) having resigned from the office of Judge of the Court in the circumstances set out in subsection (1C); and

(b) before attaining the age of 65 years has become afflicted with some permanent incapacity which, had he or she not resigned, would have disabled him or her from the due execution of his or her office—

is entitled, on becoming so afflicted, to a pension payable fortnightly at the rate of the pension that would have been payable under subsection (1C) if

he or she had attained the age of 65 years before becoming so afflicted.

(2) Upon the death—

(a) of any Judge of the Court; or

S. 83(2)
substituted by
No. 9468
s. 2(c),
amended by
No. 46/1987
s. 6,
substituted by
No. 109/1994
s. 16(1),
amended by
No. 23/2008
s. 6(2).

(b) of any person who was formerly a Judge of the Court and entitled to a pension under subsection (1), (1A), (1B), (1C) or (1D)—

S. 83(2)(b)
amended by
No. 24/2007
s. 9(2).

the partner of the Judge or former Judge is entitled, until death or marriage or until the partner becomes the domestic partner of another person, to a pension payable fortnightly at the rate of three-eighths of the annual salary for the time being payable under section 82 in respect of the office held by the Judge at the date of death or by the former Judge at the date of resignation or retirement, as the case requires.

(2A) Where there are eligible children of a deceased judge and no pension is otherwise payable under subsection (1) or (2) to or in respect of that judge there shall be paid to such person or persons as the Attorney-General directs a pension in respect of each eligible child at the rate of pension applicable to the child under subsection (2B).

S. 83(2A)
inserted by
No. 9468
s. 2(d).

(2B) The pension applicable to each child shall be the amount of the pension that would be payable to the partner of the judge if the partner was entitled to a pension under this Part divided by four or the number of eligible children (whichever is the greater).

S. 83(2B)
inserted by
No. 9468
s. 2(d),
amended by
No. 23/2008
s. 6(2)(a).

S. 83(2C)
inserted by
No. 9468
s. 2(d),
amended by
No. 23/2008
s. 7.

(2C) Eligible child in relation to a judge means a child adopted child or stepchild of the judge or his or her partner—

(a) who is under the age of 16 years; or

S. 83(2C)(b)
amended by
No. 9902
s. 2(1)(Sch.
item 29).

(b) who—

(i) has attained the age of 16 years but is under the age of 25 years; and

(ii) is receiving full-time education at a school college or university.

S. 83(3)
inserted by
No. 46/1987
s. 6,
substituted by
No. 23/2008
s. 6(3).

(3) Notwithstanding subsection (2), no pension is payable to the partner of any former Judge in any case where that partner married or became the domestic partner of the former Judge after that Judge's resignation or retirement, unless in the case of marriage, the spouse was the domestic partner of the Judge immediately prior to that Judge's resignation or retirement.

(4) Unless the Governor in Council by Order otherwise determines in any particular case the right of a Judge to a pension under this section—

(i) shall cease upon his accepting appointment to any judicial office in or outside Victoria; and

S. 83(4)(ia)
inserted by
No. 39/2003
s. 3(2),
amended by
No. 3/2005
s. 14(1).

(ia) shall be diminished by the amount of any pension to which he or she is entitled under the law of the Commonwealth or of another State or of the Northern Territory or the Australian Capital Territory, being a pension for which he or she qualified because of service that, by force of subsection (6)(ac) or (6)(ba), was or could have been counted as service in the office of Judge of the Court; and

(ii) shall be suspended while—

he holds any office or place of profit under the Crown in right of the Commonwealth or of a State; or

he is engaged in legal practice in any State or Territory of the Commonwealth or is employed by any legal practitioner in connexion with his practice in any such State or Territory:

S. 83(4)(ii)
amended by
No. 35/1996
s. 453(Sch. 1
item 11.3(a)
(b)).

Provided that this subsection does not apply to or in relation to a Judge who resigned or retired before the 15th day of February, 1970.

(5) All pensions under this section or under any corresponding previous enactment and any payments of lump sums provided by the commutation of those pensions shall be payable out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

S. 83(5)
amended by
No. 19/2001
s. 7.

(6) For the purposes of this section—

(aa) if any Judge or Associate Judge of the Court was immediately prior to his or her appointment—

(i) an acting Judge of the Court; or

(ii) an acting judge of the County Court—

his or her service as acting Judge shall count as service in the office of Judge or Associate Judge of the Court (as the case may be);

(a) if any Judge of the Court was immediately prior to his appointment Solicitor-General his service as Solicitor-General shall count as service in the office of Judge of the Court;

S. 83(6)(aa)
inserted by
No. 3/2005
s. 5,
amended by
No. 24/2008
s. 8(a).

s. 83

S. 83(6)(ab)
inserted by
No. 43/1994
s. 53,
amended by
No. 36/1995
s. 12(a)(b).

(ab) if any Judge of the Court was immediately prior to his or her appointment Director of Public Prosecutions, Chief Crown Prosecutor or a Senior Crown Prosecutor, his or her service as Director of Public Prosecutions, Chief Crown Prosecutor or a Senior Crown Prosecutor shall count as service in the office of Judge of the Court;

S. 83(6)(ac)
inserted by
No. 3/2005
s. 14(2).

(ac) if any Judge of the Court was immediately prior to his or her appointment—

S. 83(6)(ac)(i)
amended by
No. 24/2008
s. 8(b)(i).

(i) a Master or Associate Judge of the Court; or

S. 83(6)(ac)(ii)
amended by
No. 24/2008
s. 8(b)(ii).

(ii) a master of the County Court or an associate judge of the County Court or a master or associate judge (however described) of a court of another State, the Northern Territory or the Australian Capital Territory, other than a Magistrates' Court or equivalent court—

his or her service as such shall count as service in the office of Judge of the Court;

(b) if any Judge of the Court was immediately prior to his appointment a Judge of the County Court his service as a Judge of the County Court or of County Courts shall count as service in the office of Judge of the Court;

S. 83(6)(ba)
inserted by
No. 39/2003
s. 3(3).

(ba) if any Judge of the Court was immediately prior to his or her appointment—

(i) a judge of the High Court of Australia or of a court created by the Parliament of the Commonwealth, other than the Federal Magistrates Court; or

- (ii) a judge of a court of another State or of the Northern Territory or the Australian Capital Territory, other than a Magistrates' Court or equivalent court—

his or her service as such a judge shall count as service in the office of Judge of the Court;

- (c) any reference to retirement of a Judge of the Court shall be deemed to be a reference to his commission ceasing to be in force in accordance with section 77(4).

S. 83(6)(c)
amended by
No. 16/1986
s. 4(c).

- (6A) For the purposes of subsection (6)(ab), if a Judge of the Court who immediately prior to his or her appointment held the office of Director of Public Prosecutions, Chief Crown Prosecutor or a Senior Crown Prosecutor (a *relevant office*) had also held another one or two of those relevant offices immediately prior to, or successively prior to, his or her appointment to the last relevant office held by him or her, then his or her service in that other relevant office or those other relevant offices counts as service in the last of the relevant offices held by him or her.

S. 83(6A)
inserted by
No. 30/2005
s. 4.

- (7) A reference in this section to the annual salary for the time being applicable or payable in respect of an office held immediately before retirement or at the date of death, resignation or retirement is, in relation to a puisne judge who resigned or retired before the commencement of section 16 of the **Constitution (Court of Appeal) Act 1994** or the partner of such a puisne judge, a reference to the annual salary for the time being payable under section 82(2).

S. 83(7)
inserted by
No. 109/1994
s. 16(2),
amended by
No. 23/2008
s. 6(2)(a).

S. 83(8)
inserted by
No. 23/2008
s. 8.

(8) For the purpose of regulation 65 of the Family Law (Superannuation) Regulations 2001 of the Commonwealth, the Minister on the advice of an actuary appointed by the Minister may from time to time determine the accrued benefit multiple.

S. 83(9)
inserted by
No. 23/2008
s. 8,
amended by
No. 38/2009
s. 19(1).

(9) Subject to subsections (13) and (14), the Minister must comply with subsections (11) and (12) if—

- (a) a superannuation agreement which provides for a payment split; or
- (b) a flag lifting agreement which provides for a payment split; or
- (c) a splitting order—

is served on the Minister under Part VIII B or VIII AB of the Family Law Act 1975 of the Commonwealth.

S. 83(10)
inserted by
No. 23/2008
s. 8.

(10) Subsections (11) and (12) also apply to—

- (a) a superannuation agreement which provides for a payment split; or
- (b) a flag lifting agreement which provides for a payment split; or
- (c) a splitting order—

which was served on the Minister under Part VIII B of the Commonwealth Family Law Act 1975 before the commencement of section 3 of the **Constitution Amendment (Judicial Pensions) Act 2008** if the non-member spouse's entitlements in respect of the superannuation interest have not been satisfied as at that commencement.

(10A) This section also applies to—

- (a) a superannuation agreement which provides for a payment split; or
- (b) a flag lifting agreement which provides for a payment split; or
- (c) a splitting order—

which was served on the Minister under Part VIIIAB of the Commonwealth Family Law Act 1975 before the commencement of section 19 of the **Superannuation Legislation Amendment Act 2009** if the non-member spouse's entitlements in respect of the superannuation interest have not been satisfied as at that commencement.

S. 83(10A)
inserted by
No. 38/2009
s. 19(2).

(11) If the non-member spouse has not satisfied a relevant condition of release and the member spouse is not receiving a pension under this Act, the Minister must if the value of the non-member spouse's entitlement in respect of the superannuation interest at the particular time does not exceed the value of the member spouse's interest in the Fund—

- (a) transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible superannuation plan nominated in writing by the non-member spouse within the specified period; or
- (b) if the non-member spouse fails to nominate in writing an eligible superannuation plan within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible rollover fund selected by the Minister.

S. 83(11)
inserted by
No. 23/2008
s. 8.

S. 83(12)
inserted by
No. 23/2008
s. 8.

- (12) If the non-member spouse has satisfied a relevant condition of release or the member spouse is receiving a pension under this Act, the Minister must if the value of the non-member spouse's entitlement in respect of the superannuation interest at the particular time does not exceed the value of the member spouse's interest in the Fund—
- (a) if so requested in writing by the non-member spouse within the specified period, pay the non-member spouse a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment; or
 - (b) if so requested in writing by the non-member spouse within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible superannuation plan nominated in writing by the non-member spouse; or
 - (c) if no request is received from the non-member spouse within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible rollover fund selected by the Minister.

S. 83(13)
inserted by
No. 23/2008
s. 8.

- (13) Subsections (11) and (12) do not apply if—
- (a) the member spouse's superannuation interest is an unsplittable interest; or
 - (b) a payment flag is operating in respect of the member spouse's superannuation interest; or

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- (c) the non-member spouse has served a waiver notice on the Minister under section 90MZA of the Family Law Act 1975 of the Commonwealth in respect of the member spouse's superannuation interest; or
- (d) the member spouse's superannuation interest is a payment that is not a splittable payment under Part 2 of the Family Law (Superannuation) Regulations 2001 of the Commonwealth.
- (14) If the member spouse's superannuation interest is a pension under this Act due to a disability which is a splittable payment, the Minister may determine that subsections (11) and (12) do not apply. **S. 83(14) inserted by No. 23/2008 s. 8.**
- (15) If the non-member spouse serves a waiver notice on the Minister under section 90MZA of the Family Law Act 1975 of the Commonwealth in respect of the member spouse's superannuation interest, the Minister may make a payment to the non-member spouse not exceeding the value at a particular time of the non-member spouse's entitlement in respect of the superannuation interest less any payments previously made by the Minister to the non-member spouse in accordance with this section. **S. 83(15) inserted by No. 23/2008 s. 8.**
- (16) Despite anything to the contrary in this Act, if under subsection (11), (12) or (15) an amount is paid by the Minister to a non-member spouse or transferred by the Minister on behalf of a non-member spouse, the benefit of a member spouse must be reduced by the Minister in accordance with a methodology approved by the Minister, on the advice of an actuary appointed by the Minister. **S. 83(16) inserted by No. 23/2008 s. 8.**
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S. 83(17)
inserted by
No. 23/2008
s. 8.

(17) On the application of an eligible person within the meaning of section 90MZB(8) of the Family Law Act 1975 of the Commonwealth, the Minister may provide information additional to the information required to be provided under section 90MZB of that Act if the Minister considers that the additional information is necessary to understand the member spouse's benefit entitlements.

S. 83(18)
inserted by
No. 23/2008
s. 8.

(18) The entitlement of a person to convert or commute a benefit or pension under this Act is not affected by the making of a payment or transfer under subsection (11), (12) or (15).

S. 83(19)
inserted by
No. 23/2008
s. 8.

(19) The Minister may charge reasonable fees in respect of—

- (a) a payment split;
- (b) a payment flag;
- (c) flag lifting under a flag lifting agreement that does not provide for a payment split;
- (d) an order under section 90MM of the Family Law Act 1975 of the Commonwealth terminating the operation of a payment flag;
- (e) an application under section 90MZB of the Family Law Act 1975 of the Commonwealth for information about a superannuation interest;
- (f) any other thing done by the Minister in relation to a superannuation interest covered by a superannuation agreement, flag lifting agreement or splitting order;
- (g) the provision of information under subsection (17).

S. 83(20)
inserted by
No. 23/2008
s. 8.

(20) Fees charged under subsection (19) must not exceed the maximum levels of fees fixed by the Minister for the purposes of this section by notice published in the Government Gazette.

(21) If the Minister charges a fee under subsection (19), the fee is payable—

S. 83(21)
inserted by
No. 23/2008
s. 8.

- (a) unless paragraph (b) applies, in the case of subsection (19)(a), (19)(b), (19)(c), (19)(d) or (19)(f), by the member spouse and the non-member spouse in equal parts;
- (b) if the fee is in respect of a payment split under which the non-member spouse is entitled to be paid the whole of the amount of each splittable payment that becomes payable, by the non-member spouse;
- (c) in the case of subsection (19)(e) or (19)(g), by the person who made the application.

(22) For the purposes of this section, the Minister may, with such modifications as are necessary, adopt any specified standards made by Order in Council under section 92A of the **State Superannuation Act 1988** for the purposes of Part 7A of that Act.

S. 83(22)
inserted by
No. 23/2008
s. 8.

83AA Election of Judges of the Supreme Court to commute future pensions for payment of superannuation contributions surcharge

S. 83AA
inserted by
No. 19/2001
s. 8.

- (1) A Judge of the Court may elect in writing to the Minister to have part of his or her future pension entitlement and that of his or her partner or eligible child, if any, under this Act commuted to provide a lump sum for the purposes of payment of the whole of the liability for the superannuation contributions surcharge arising because of the entitlement of the Judge or his or her partner or eligible child to receive a pension under this Act.
- (2) A Judge of the Court may by notice in writing to the Minister revoke his or her election under subsection (1).

S. 83AA(1)
amended by
No. 23/2008
s. 6(4).

s. 83AB

S. 83AB
inserted by
No. 19/2001
s. 8.

83AB Actuary's first calculation after election of Judges of the Court to commute pensions

(1) If an election under section 83AA is in operation, within 10 days after the day on which a Judge of the Court resigns, retires or dies while in office, the Minister must—

S. 83AB(1)(a)
amended by
No. 23/2008
s. 6(4).

(a) cause an actuary to determine the extent to which the former Judge of the Court's pension and any future entitlement of the Judge's partner or eligible child to a pension upon the Judge's death otherwise payable under this Act will be reduced subject to subsection (4) and taking into account the lump sum to be provided by the commutation of part of the Judge's total pension entitlement and that of his or partner or eligible child at the time at which the former Judge became entitled to his or her pension for the purposes of payment of the whole of the liability for the superannuation contributions surcharge; and

S. 83AB(1)(b)
amended by
No. 23/2008
s. 6(4).

(b) notify the former Judge of the Court or, if he or she has died, the former Judge's partner or eligible child of the actuary's determination under subsection (1)(a).

S. 83AB(2)
amended by
No. 23/2008
s. 6(4).

(2) A former Judge of the Court or, if he or she has died, the former Judge's partner or eligible child may revoke the election under section 83AA within 10 days after the Minister's notification under subsection (1)(b).

S. 83AB(3)
amended by
No. 23/2008
s. 6(4).

(3) If an election under section 83AA is in operation, the former Judge of the Court's pension and any future entitlement of the former Judge's partner or eligible child to a pension upon the Judge's death otherwise payable from time to time under this Act must be reduced to the extent determined under subsection (1).

- (4) For the purposes of subsection (1)—
- (a) the reduction of the former Judge's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Judge resigned or retired; and
 - (b) the reduction of any future entitlement of the Judge's partner or eligible child to a pension must not exceed 15% of an amount equal to the total pension entitlement of the Judge's partner and eligible children on the day on which the Judge resigned, retired or died while in office; and
 - (c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and
 - (d) each reduction must be applied from the entitlement day according to paragraph (a) or (b).

S. 83AB(4)(b)
amended by
No. 23/2008
s. 6(4).

83AC Actuary's second calculation after the Judges' elections to commute pensions and payment of lump sums

S. 83AC
inserted by
No. 19/2001
s. 8.

- (1) If an election under section 83AA is in operation, a former Judge of the Court or, if he or she has died, the Judge's partner or eligible child must, within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the Judge's pension, lodge with the Minister—
- (a) a notice that authorises the Minister to pay the lump sum that is equal to the superannuation contributions surcharge on behalf of the former Judge or his or her partner or eligible child to the Commissioner of Taxation to be applied wholly towards

S. 83AC(1)
amended by
No. 23/2008
s. 6(4).

S. 83AC(1)(a)
amended by
No. 23/2008
s. 6(4).

payment of the superannuation contributions surcharge; and

(b) a copy of the superannuation contributions surcharge notice.

(2) Within 10 days after the day on which the Minister received the authorisation and a copy of the superannuation contributions surcharge notice under subsection (1), the Minister must cause an actuary—

(a) to review the determination made under section 83AB(1); and

(b) subject to section 83AB(4), make any necessary adjustments to the determination and to the pension payable to the former Judge of the Court and to any future entitlement of the former Judge's partner or eligible child to a pension upon the Judge's death.

(3) If an election under section 83AA is in operation and the Minister has received an authorisation under subsection (1), the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

S. 83AC(2)(b)
amended by
No. 23/2008
s. 6(4).

S. 83AD
inserted by
No. 19/2001
s. 8.

83AD Election of former Judges of Court to commute pensions for payment of superannuation contributions surcharge

S. 83AD(1)
amended by
No. 23/2008
s. 6(4).

(1) If no election under section 83AA is in operation, a former Judge of the Court who is entitled to receive a pension under this Act may elect to have part of his or her pension and that of his or her partner or eligible child, if any, commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the

superannuation contributions surcharge arising because of the entitlement of the former Judge or his or her partner or eligible child to receive a pension under this Act.

(2) An election under subsection (1) must—

(a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice is issued in respect of a former Judge of the Court's pension or his or her partner's or eligible child's pension; and

S. 83AD(2)(a)
amended by
No. 23/2008
s. 6(5).

(b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pensions; and

(c) authorise the Minister to pay the lump sum on behalf of the former Judge or his or her partner or eligible child to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and

S. 83AD(2)(c)
amended by
No. 23/2008
s. 6(4).

(d) be accompanied by a copy of the superannuation contributions surcharge notice.

83AE Actuary's calculation after former Judges' election to commute pensions

S. 83AE
inserted by
No. 19/2001
s. 8.

(1) If an election under section 83AD is in operation, the Minister must within 10 days after the day on which the Minister received the election—

(a) cause an actuary to determine the extent to which a former Judge of the Court's pension and any future entitlement of the partner or eligible child of the former Judge to a pension upon the Judge's death otherwise payable under this Act will be reduced subject to section 83AF(3) and taking into

S. 83AE(1)(a)
amended by
No. 23/2008
s. 6(4).

s. 83AF

account the specified amount of the lump sum to be provided by the commutation of the pensions; and

S. 83AE(1)(b) amended by No. 23/2008 s. 6(4).

(b) notify the former Judge of the Court or, if he or she has died, the former Judge's partner or eligible child of the actuary's determination under subsection (1)(a).

S. 83AE(2) amended by No. 23/2008 s. 6(4).

(2) A former Judge of the Court or, if he or she has died, the former Judge's partner or eligible child may revoke the election under section 83AD within 10 days after the Minister's notification under subsection (1)(b).

S. 83AF inserted by No. 19/2001 s. 8.

83AF Payment and commutation of pensions of former Judges of the Court

(1) If an election under section 83AD is in operation, the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

S. 83AF(2) amended by No. 23/2008 s. 6(4).

(2) The former Judge of the Court's pension and any future entitlement of the Judge's partner or eligible child to a pension upon the Judge's death otherwise payable from time to time under this Act must be reduced to the extent determined under section 83AE in consequence of the payment of the lump sum.

(3) For the purposes of section 83AE—

(a) the reduction of the former Judge's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Judge resigned or retired; and

S. 83AF(3)(b) amended by No. 23/2008 s. 6(4).

(b) the reduction of any future entitlement of the Judge's partner or eligible child to a pension must not exceed 15% of an amount equal to

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- the total pension entitlement of the Judge's partner and eligible children on the day on which the Judge resigned or retired; and
- (c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and
 - (d) the reduction must be applied from the day of payment of the lump sum under subsection (1).

83AG Election of Judges' partners and eligible children to commute pensions for payment of superannuation contributions surcharge

S. 83AG
(Heading)
amended by
No. 23/2008
s. 6(6).

S. 83AG
inserted by
No. 19/2001
s. 8.

- (1) If no election under section 83AA or 83AD is in operation, a person who is entitled to receive a pension under this Act as the partner or eligible child of a deceased former Judge of the Court may elect to have part of his or her pension commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the superannuation contributions surcharge arising because of the entitlement of the former Judge to receive a pension under this Act or the entitlement of the deceased former Judge's partner or eligible child to receive a pension under this Act.
- (2) An election under subsection (1) must—
 - (a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the deceased former Judge's pension or his or her partner's or eligible child's pension; and

S. 83AG(1)
amended by
No. 23/2008
s. 6(4).

S. 83AG(2)(a)
amended by
No. 23/2008
s. 6(5).

s. 83AH

S. 83AG(2)(c)
amended by
No. 23/2008
s. 6(4).

- (b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pension; and
- (c) authorise the Minister to pay the lump sum on behalf of the person who is entitled to receive a pension under this Act as the partner or eligible child of the deceased former Judge of the Court to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and
- (d) be accompanied by a copy of the superannuation contributions surcharge notice.

S. 83AH
(Heading)
amended by
No. 23/2008
s. 6(6).

S. 83AH
inserted by
No. 19/2001
s. 8.

83AH Actuary's calculation of reduction of pensions of Judges' partners and eligible children

- (1) If an election is made under section 83AG, the Minister must within 10 days after the day on which the Minister received the election—

S. 83AH(1)(a)
amended by
No. 23/2008
s. 6(4).

- (a) cause an actuary to determine the extent to which the pension of a person who is entitled to receive a pension under this Act as the partner or eligible child of a deceased former Judge of the Court otherwise payable under this Act will be reduced subject to section 83AI(3) and taking into account the specified amount of the lump sum to be provided by the commutation of the pension; and
- (b) notify the person of the actuary's determination under subsection (1)(a).

- (2) A person who is entitled to receive a pension under this Act as the partner or eligible child of a deceased former Judge of the Court may revoke his or her election under section 83AG within 10 days after the Minister's notification under subsection (1)(b).

S. 83AH(2)
amended by
No. 23/2008
s. 6(4).

83AI Payment and commutation of pensions of former Judges' partners and eligible children

S. 84AI
(Heading)
amended by
No. 23/2008
s. 6(6).

- (1) If an election under section 83AG is in operation, the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

S. 83AI
inserted by
No. 19/2001
s. 8.

- (2) On payment of the lump sum, the pension of a person entitled to receive a pension as the partner or eligible child of the deceased former Judge of the Court otherwise payable from time to time under this Act must be reduced to the extent determined under section 83AH.

S. 83AI(2)
amended by
No. 23/2008
s. 6(4).

- (3) For the purposes of section 83AH—

- (a) the reduction of any future entitlement of the Judge's partner or eligible child to a pension must not exceed 15% of—

S. 83AI(3)(a)
amended by
No. 23/2008
s. 6(4).

- (i) an amount equal to the total pension entitlement of the Judge and his or her partner and eligible children on the day on which the Judge resigned or retired; or

S. 83AI(3)(a)(i)
amended by
No. 23/2008
s. 6(4).

- (ii) in the case of the Judge's death while in office, an amount equal to his or her partner's and eligible children's total pension entitlement on the day on which the Judge died; and

S. 83AI(3)(a)(ii)
amended by
No. 23/2008
s. 6(5).

- (b) the reduction must be a fixed percentage to be applied to the pension entitlement under the Act; and
- (c) the reduction must be applied from the day of payment of the lump sum under subsection (1).

S. 83A
(Heading)
inserted by
No. 24/2008
s. 9(1).

S. 83A
inserted by
No. 22/1995
s. 19.

83A Salaries of Associate Judges

S. 83A(1)
amended by
No. 4/2002
s. 12(1)(b),
substituted by
No. 38/2004
s. 12(6),
amended by
No. 24/2008
s. 9(2)(a).

- (1) Each Associate Judge shall be paid a salary at the rate for the time being applicable under the **Judicial Salaries Act 2004**.

S. 83A(2)
amended by
No. 4/2002
s. 12(1)(b),
substituted by
No. 38/2004
s. 12(7),
amended by
No. 24/2008
s. 9(2)(a).

- (2) Each Associate Judge 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**.

S. 83A(2A)
inserted by
No. 83/2008
s. 5(1),
amended by
No. 83/2008
s. 6.

- (2A) An Associate Judge may by notice in writing to the Attorney-General enter into an arrangement under which the Associate Judge agrees to receive the whole or part of his or her total amount of future salary as an Associate Judge as non-salary benefits of an equivalent value.

S. 83A(2B)
inserted by
No. 83/2008
s. 5(1).

- (2B) 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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| (2C) An Associate Judge may vary or revoke a notice he or she has given under subsection (2A) by notice in writing to the Attorney-General. | S. 83A(2C) inserted by No. 83/2008 s. 5(1), amended by No. 83/2008 s. 6(a). |
| (2D) 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. | S. 83A(2D) inserted by No. 83/2008 s. 5(1). |
| (3) Nothing in this section authorises the salaries or the aggregate value of the allowances payable to the Associate Judges to be reduced. | S. 83A(3) amended by No. 24/2008 s. 9(2)(b). |
| (3A) An arrangement referred to in subsection (2A) or (5) does not constitute and is deemed never to have constituted a reduction in the salary of the Associate Judge who enters or entered into the arrangement. | S. 83A(3A) inserted by No. 83/2008 s. 5(2), amended by No. 83/2008 s. 6(c). |
| (4) The following are to be paid out of the Consolidated Fund, which is appropriated to the necessary extent— | S. 83A(4) substituted by No. 1/2000 s. 3(3). |
| (a) the salaries (including the amount of any non-salary benefits) and allowances payable under this section; and | S. 83A(4)(a) amended by No. 83/2008 s. 5(3). |
| (b) premiums and other amounts payable under the Accident Compensation (WorkCover Insurance) Act 1993 in respect of the Associate Judges; and | S. 83A(4)(b) amended by No. 24/2008 s. 9(2)(c)(i). |
| (c) payroll tax payable under the Payroll Tax Act 2007 in respect of wages paid or payable to the Associate Judges; and | S. 83A(4)(c) amended by No. 24/2008 s. 9(2)(c). |
| (d) tax payable under the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of fringe benefits provided to the Associate Judges. | S. 83A(4)(d) amended by No. 24/2008 s. 9(2)(c)(i). |
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S. 83A(5)
repealed by
No. 38/2004
s. 12(8), new
s. 83A(5)
inserted by
No. 83/2008
s. 5(4).

(5) If, before the commencement of section 5 of the **Salaries Legislation Amendment (Salary Sacrifice) Act 2008** (the *2008 Act*), a master entered into an arrangement under which the master agreed to receive the whole or part of his or her total amount of salary as a master as non-salary benefits of an equivalent value, that arrangement, by virtue of this subsection, has and is deemed always to have had full effect according to its tenor as if it had been authorised under this section.

S. 83A(6)
inserted by
No. 83/2008
s. 5(4).

(6) On and after the commencement of section 5 of the 2008 Act, an arrangement referred to in subsection (5) may only be varied or revoked in accordance with subsection (2C).

S. 83A(7)
inserted by
No. 83/2008
s. 5(4).

(7) In subsection (2A) *non-salary benefits* has the same meaning as it has in clause 3(5) of Schedule 1A to the **Public Administration Act 2004**.

No. 6387 s. 13.

84 Judges not to hold any other place of profit

(1) A Judge of the Court may not accept take or perform the duties of any other office or place of profit or emolument within Victoria excepting such office as is granted to him by Her Majesty's sign manual or the office of Judge of a Vice-Admiralty Court.

S. 84(2)
amended by
No. 64/1990
s. 20(Sch.
item 1.3).

(2) Any such acceptance taking or performance of the duties of any such other office shall be deemed in law an avoidance of his office of Judge, and his office and commission shall be thereby in fact superseded and his salary thereupon cease.

(3) Notwithstanding anything in subsection (1) a Judge may accept take and perform the duties of another office or place to which, with his consent—

- (a) he is appointed by the Governor in Council;
- (b) he is appointed with the consent of the Chief Justice and the Governor in Council—

but notwithstanding anything in any other Act or regulation a Judge shall not receive and shall not be eligible to receive any payment for or in respect of any such other office or place.

- (4) Subsection (1) does not apply to or in relation to a judge nominated to an office on the Parole Board pursuant to Part 8 of the **Corrections Act 1986**.

S. 84(4) amended by Nos 117/1986 s. 6(Sch. 1 item 5(5)), 12/2001 s. 4.

- (5) This section does not apply to a Judge who made an election under section 80A before the commencement of section 3 of the **Courts Legislation (Judicial Appointments and Other Amendments) Act 2005**.

S. 84(5) inserted by No. 43/1991 s. 40(2), amended by No. 14/2006 s. 7.

85 Powers and jurisdiction of the Court

Comp. No. 6387 ss 15–19.

- (1) Subject to this Act the Court shall have jurisdiction in or in relation to Victoria its dependencies and the areas adjacent thereto in all cases whatsoever and shall be the superior Court of Victoria with unlimited jurisdiction.

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S. 85(2) repealed by No. 110/1986 s. 132(d).

- (3) The Court has and may exercise such jurisdiction (whether original or appellate) and such powers and authorities as it had immediately before the commencement of the **Supreme Court Act 1986**.

S. 85(3) substituted by No. 110/1986 s. 132(e).

- (4) This Act does not limit or affect the power of the Parliament to confer additional jurisdiction or powers on the Court.

S. 85(5)
inserted by
No. 35/1991
s. 4.

- (5) A provision of an Act, other than a provision which directly repeals or directly amends any part of this section, is not to be taken to repeal, alter or vary this section unless¹⁴—
- (a) the Act expressly refers to this section in, or in relation to, that provision and expressly, and not merely by implication, states an intention to repeal, alter or vary this section; and
 - (b) the member of the Parliament who introduces the Bill for the Act or, if the provision is inserted in the Act by another Act, the Bill for that other Act, or a person acting on his or her behalf, makes a statement to the Council or the Assembly, as the case requires, of the reasons for repealing, altering or varying this section; and
 - (c) the statement is so made—
 - (i) during the member's second reading speech; or
 - (ii) after not less than 24 hours' notice is given of the intention to make the statement but before the third reading of the Bill; or
 - (iii) with the leave of the Council or the Assembly, as the case requires, at any time before the third reading of the Bill.

S. 85(6)
inserted by
No. 35/1991
s. 4.

- (6) A provision of a Bill which excludes or restricts, or purports to exclude or restrict, judicial review by the Court of a decision of another court, tribunal, body or person is to be taken to repeal, alter or vary this section and to be of no effect unless the requirements of subsection (5) are satisfied¹⁵.

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- (7) A provision of an Act which creates, or purports to create, a summary offence is not to be taken, on that account, to repeal, alter or vary this section¹⁶.
- (8) A provision of an Act that confers jurisdiction on a court, tribunal, body or person which would otherwise be exercisable by the Supreme Court, or which augments any such jurisdiction conferred on a court, tribunal, body or person, does not exclude the jurisdiction of the Supreme Court except as provided in subsection (5)¹⁷.
- (8A) The following sections of this Act alter or vary this section and have effect, for the purposes of this section, as direct amendments of this section—
- (a) sections 73 and 74 as they apply to publication within the meaning of those sections as amended by section 3 of the **Constitution (Amendment) Act 1997**;
- (b) section 74AA.
- * * * * *
- (9) Section 63 of the **Accident Compensation (WorkCover) Act 1992** as amended by section 65(1) of the **Accident Compensation (Amendment) Act 1994** and as amended by section 50(1) of the **Accident Compensation (Amendment) Act 1996** and as amended by section 30 of the **Accident Compensation (Further Amendment) Act 1996** and as amended by sections 11, 45, 46, 47 and 48 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** alters or varies this section to the extent necessary to limit the jurisdiction of the Supreme
- S. 85(7) inserted by No. 35/1991 s. 4.
- S. 85(8) inserted by No. 35/1991 s. 4.
- S. 85(8A) inserted by No. 95/1997 s. 5.
- S. 85(8B) inserted by No. 40/2001 s. 4, repealed by No. 40/2001 s. 5.¹⁸
- S. 85(9) inserted by No. 67/1992 s. 63(2), amended by Nos 50/1994 s. 65(2), 7/1996 s. 50(2), 60/1996 s. 30(2), 107/1997 s. 63(1).

Court as specified in that section and has effect as a direct amendment of this section.

S. 85(10)
inserted by
No. 107/1997
s. 63(2).

- (10) Section 252C of the **Accident Compensation Act 1985** alters or varies this section and has effect as a direct amendment of this section.

S. 85(11)
inserted by
No. 6/2001
s. 10.

- (11) Section 4 of the **Corporations (Commonwealth Powers) Act 2001** alters or varies this section and has effect as a direct amendment of this section.

S. 85(12)
inserted by
No. 39/2004
s. 259.

- (12) Divisions 2 and 3 of Part 6 of the **Road Management Act 2004** (as inserted by section 270 of the **Mitcham-Frankston Project Act 2004**) and section 129 of the **Road Management Act 2004** (as inserted by section 272 of the **Mitcham-Frankston Project Act 2004**) alter or vary this section and have effect as direct amendments of this section.

S. 85(13)
inserted by
No. 39/2004
s. 259.

- (13) Section 52(4) of the **Victorian Civil and Administrative Tribunal Act 1998** (as amended by section 167(1) of the **Road Management Act 2004** as that Act is amended by section 276 of the **Mitcham-Frankston Project Act 2004**) alters or varies this section and has effect as a direct amendment of this section.

S. 85(14)
inserted by
No. 25/2005
s. 16.

- (14) Section 246CZC of the **Transport Act 1983** (as inserted by section 15 of the **Transport Legislation (Further Amendment) Act 2005**) alters or varies this section and has effect as a direct amendment of this section.

44 Geo. III.
c. 102.

86 Power to Judges to award habeas corpus

S. 86
amended by
Nos 110/1986
s. 132(f),
24/2008 s. 10.

The Court constituted by a Judge of the Court may award a writ of habeas corpus for bringing any prisoner detained in any gaol or prison before any Court to be there examined as a witness.

**87 Court not to be required to exercise jurisdiction
where jurisdiction conferred on other bodies**

No. 6387
s. 15(2).

(1) Except as is provided by any Act or the rules of the Court the Court shall not be bound to exercise any jurisdictions powers or authorities in relation to any matters in respect of which jurisdiction is given by or under any Act to any other Court tribunal or body.

S. 87(1)
amended by
Nos 110/1986
s. 132(g),
64/1990
s. 7(2).

(2) Despite anything in any Act or the Rules, any power, duty or act which might have been exercised or performed by the Court constituted by a Judge or by an Associate Judge may be exercised or performed by the Court constituted by any other Judge or Associate Judge (as the case requires) if the Court cannot for any reason be constituted by that first-mentioned Judge or Associate Judge.

S. 87(2)
substituted by
No. 110/1986
s. 132(h),
amended by
No. 24/2008
s. 11.

Pt 3AA
(Heading and
ss 87AAA–
87AAJ)
inserted by
No. 16/2005
s. 4.

PART IIIAA—THE JUDICIARY

S. 87AAA
inserted by
No. 16/2005
s. 4.

87AAA Definitions

In this Part—

investigating committee means an investigating committee appointed under section 87AAD;

judicial office means the office of any of the following—

- (a) Judge of the Supreme Court;
- (b) Associate Judge of the Supreme Court;
- (c) judge of the County Court;
- (d) associate judge of the County Court;
- (e) magistrate;

panel means panel established under section 87AAC;

qualifying office means the office of judge of any of the following courts—

- (a) Federal Court of Australia;
- (b) Family Court of Australia;
- (c) Family Court of Western Australia;
- (d) Supreme Court of a State other than Victoria;
- (e) Supreme Court of the Australian Capital Territory or the Northern Territory;

special majority has the same meaning as in section 18.

S. 87AAA
def. of
judicial office
amended by
No. 24/2008
s. 12.

87AAB Removal from judicial office

S. 87AAB
inserted by
No. 16/2005
s. 4.

- (1) The Governor in Council may remove the holder of a judicial office from that office on the presentation to the Governor of an address from both Houses of the Parliament agreed to by a special majority in the same session praying for that removal on the ground of proved misbehaviour or incapacity.
- (2) A resolution of a House of the Parliament or of both Houses of the Parliament praying for the removal from office of the holder of a judicial office is void if an investigating committee appointed under section 87AAD has not concluded that facts exist that could amount to proved misbehaviour or incapacity such as to warrant the removal of that office holder from office.
- (3) This section extends to term appointments or acting appointments to a judicial office but does not prevent the holder of the office ceasing to hold office on the expiry of the term or the period for which he or she is appointed to act.
- (4) Except as provided by this Part, no holder of a judicial office can be removed from that office.

87AAC Judicial panel

S. 87AAC
inserted by
No. 16/2005
s. 4.

- (1) A panel of 7 persons is established for the purposes of this Part.
- (2) Members of the panel are appointed by the Attorney-General for the term specified in their instrument of appointment.
- (3) A person is only eligible for appointment as a panel member if he or she has held a qualifying office but no longer holds one.
- (4) The office of a panel member becomes vacant if he or she is appointed to a qualifying office.

- (5) A panel member may resign his or her office as panel member by delivering to the Attorney-General a signed letter of resignation.

S. 87AAD
inserted by
No. 16/2005
s. 4.

87AAD Appointment of investigating committee

- (1) An investigating committee is to be appointed if the Attorney-General is satisfied that there are reasonable grounds for the carrying out of an investigation into whether facts exist that could amount to proved misbehaviour or incapacity on the part of the holder of a judicial office such as to warrant the removal of that office holder from office.
- (2) An investigating committee consists of 3 members of the panel appointed by the Attorney-General on the recommendation of the most senior member for the time being of the panel.
- (3) The Attorney-General, on the recommendation of the most senior member for the time being of the panel, must appoint one of the members of the investigating committee as chairperson of the committee.
- (4) For the purposes of this section panel members have seniority in relation to each other according to the dates of their first appointment to a qualifying office.

S. 87AAE
inserted by
No. 16/2005
s. 4.

87AAE Role of investigating committee

The role of an investigating committee is to investigate the matter relating to the holder of a judicial office referred to it and report to the Attorney-General, within the period specified by him or her, its conclusion as to whether facts exist that could amount to proved misbehaviour or incapacity such as to warrant the removal of that office holder from office.

87AAF Powers of investigating committee

S. 87AAF
inserted by
No. 16/2005
s. 4.

- (1) An investigating committee has, and may exercise, the powers conferred by sections 17, 18, 19, 19A, 19B, 19C, 19D, 19E, 20, 20A, 21 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958** as if the committee were a body of persons to whom the Governor in Council has issued a commission and the chairperson of the committee were the president or chairperson of the commission.
- (2) A person is not excused from answering any question or producing any document or thing when required by an investigating committee on the ground that the answering of the question or the production of the document or thing is prohibited by or under any Act.
- (3) The answering of a question or the production of a document or thing, when required by an investigating committee, does not constitute a breach of a provision made by or under any Act prohibiting the disclosure of information of a kind contained in that answer, document or thing.

S. 87AAF(1)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 11.1).

87AAG Procedure and evidence at an investigation

S. 87AAG
inserted by
No. 16/2005
s. 4.

- (1) If the investigating committee agrees, a person or body may be legally represented at the investigation or represented by an agent of any other kind.
- (2) The investigating committee is not bound by the rules of evidence and may be informed on any matter in issue at the inquiry in any manner that it considers appropriate.

s. 87AAH

- (3) The investigating committee may give directions as to the procedure to be followed at or in connection with the investigation.

S. 87AAH
inserted by
No. 16/2005
s. 4.

87AAH Report of investigating committee

- (1) The investigating committee must, within the period required by the Attorney-General, prepare a report on the conduct and findings, and any conclusions, of the investigation and submit the report to the Attorney-General.
- (2) The report of the investigating committee must state its conclusion as to whether facts exist that could amount to proved misbehaviour or incapacity such as to warrant the removal of that office holder from office.
- (3) The Attorney-General may, if he or she considers it appropriate to do so, cause a copy of the report of the investigating committee to be laid before each House of Parliament.

S. 87AAI
inserted by
No. 16/2005
s. 4.

87AAI Retirement

This Part does not prevent the fixing by or under an Act of an age at which all holders of a judicial office, or all holders of a judicial office in a court, are required to retire or the alteration from time to time of an age so fixed.

S. 87AAJ
inserted by
No. 16/2005
s. 4.

87AAJ Abolition of judicial office

- (1) This Part does not prevent the abolition of a judicial office by or under an Act.
- (2) The person who held an abolished judicial office is entitled (without loss of remuneration) to be appointed to and to hold another judicial office in the same court or in a court of equivalent or higher status, unless already the holder of such an office.

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- (3) That right remains operative for the period during which the person was entitled to hold the abolished office, subject to removal as provided by this Part. The right lapses if the person declines appointment to the other office or resigns from it.
- (4) This section applies whether the judicial office was—
- (a) abolished directly; or
 - (b) abolished indirectly by the abolition of a court or part of a court.
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Pt 3A
(Heading and
ss 87AA–
87AF)
inserted by
No. 62/1999
s. 11.

PART IIIA—DIRECTOR OF PUBLIC PROSECUTIONS

S. 87AA
inserted by
No. 62/1999
s. 11.

87AA Definition

In this Part—

Director means Director of Public Prosecutions
appointed under section 87AB.

S. 87AB
inserted by
No. 62/1999
s. 11.

87AB Appointment

- (1) The Governor in Council may appoint as Director of Public Prosecutions a person who is a barrister and solicitor of the Supreme Court of not less than 8 years' standing.
- (2) Subject to this Part, a person appointed as Director holds office for a term of 10 years or for the longer term, not exceeding 20 years, that is specified in his or her instrument of appointment and is eligible for re-appointment.

S. 87AC
inserted by
No. 62/1999
s. 11.

87AC Terms and conditions

- (1) The Director is entitled to be paid the same salary as that payable to a judge of the Supreme Court under section 82(2).
- (2) The Director must not, without the consent of the Attorney-General and in accordance with any conditions attached to that consent, engage in the practice of the law or in any paid employment (whether within or outside Victoria) outside the duties of his or her office.
- (3) The office of Director is not an authority within the meaning of section 47(1) of the **Public Sector Management and Employment Act 1998**.

87AD Resignation

The Director may resign from office by delivering to the Governor a signed letter of resignation.

S. 87AD
inserted by
No. 62/1999
s. 11.

87AE Suspension and removal from office

- (1) The Governor in Council may suspend the Director from office.
- (2) If the Director is suspended from office the Attorney-General must cause a full statement of the ground or grounds of the suspension to be laid before each House of Parliament on or before the 7th sitting day of that House after the suspension.
- (3) The Governor in Council must remove the Director from office if each House of Parliament on or before the 7th sitting day of that House after the statement is laid before it passes a resolution declaring that the Director ought to be removed from office.
- (4) If both Houses of Parliament do not pass a resolution of the kind specified in subsection (3) within the time specified in that subsection, the Governor in Council must without delay remove the suspension and restore the Director to office.
- (5) The Director can only be removed from office in accordance with this section.

S. 87AE
inserted by
No. 62/1999
s. 11.

87AF Pension of Director and of his or her spouse and children

- (1) The Director and his or her spouse and children 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 Supreme Court (other than the Chief Justice, the President of the Court of Appeal or a Judge of Appeal) and his or her spouse and children are entitled to under section 83.

S. 87AF
inserted by
No. 62/1999
s. 11.

s. 87AF

(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 83 are liable to be suspended or determined.

S. 87AF(2A)
inserted by
No. 19/2001
s. 9(1).

(2A) A pension under this section may be commuted in the same circumstances and to the same extent as pensions under sections 83AC, 83AF and 83AI may be commuted and for that purpose sections 83AA to 83AI of that Act apply with such modifications as are necessary.

S. 87AF(3)
amended by
No. 19/2001
s. 9(2).

(3) All pensions under this section or under any corresponding previous enactment and any payments of lump sums provided by the commutation of those pensions are payable out of the Consolidated Fund which is to the necessary extent appropriated accordingly.

PART IV—THE EXECUTIVE

87A Executive Council^{19, 20}

There shall be an Executive Council of the State of Victoria.

S. 87A
inserted by
No. 108/1994
s. 5.

87B Members of Executive Council²¹

(1) The Executive Council consists of—

- (a) the persons who, immediately before the commencement of section 5 of the **Constitution (Amendment) Act 1994**, are members of the Executive Council; and
- (b) persons who may, at any time, be members of the Executive Council in accordance with any Act; and
- (c) such other persons as the Governor, from time to time in the name and on behalf of Her Majesty and subject to any Act, appoints under the Public Seal of the State to be members of the Executive Council—

until resignation or removal from membership by the Governor.

(2) A member of the Executive Council may attend a meeting of the Executive Council or exercise the powers of such a member only if he or she is a Minister.

S. 87B
inserted by
No. 108/1994
s. 5.

87C Meetings of Executive Council²²

(1) The Governor shall preside at meetings of the Executive Council.

(2) If the Governor is absent from a meeting of the Executive Council and—

- (a) the Lieutenant-Governor or Administrator has assumed the administration of the Government of the State under section 6B; or

S. 87C
inserted by
No. 108/1994
s. 5.

s. 87D

-
- (b) the meeting is held while there is a subsisting appointment of the Lieutenant-Governor or Administrator as deputy under section 6C—
the Lieutenant-Governor or Administrator (as the case requires) shall preside.
- (3) The quorum for a meeting of the Executive Council is 2 members of the Executive Council.
- (4) The Executive Council shall not proceed to dispatch of business unless it has been duly summoned by authority of the Governor.

S. 87D
inserted by
No. 108/1994
s. 5.

87D Rules of Executive Council²³

The Governor in Council may, by instrument, make rules in respect of the practices and procedures of the Executive Council.

S. 87E
inserted by
No. 108/1994
s. 5.

87E Advice to Governor²⁴

Where the Governor is bound by law or established constitutional convention to act in accordance with advice—

- (a) the Executive Council shall advise the Governor on the occasions when the Governor is permitted or required by any statute or other instrument to act in Council; and
- (b) the Premier (or, in the absence of the Premier, the Acting Premier) shall tender advice to the Governor in relation to the exercise of the other powers and functions of Governor.

88 Appointment to public offices

Constitution
Act s. XXXVII.

Subject to the express provisions of any other Act the appointment to public offices under the Government of Victoria hereafter to become vacant or to be created whether such offices be salaried or not shall be vested in the Governor in Council with the exception of the appointments of the officers liable to retire from office on political grounds which appointments shall be vested in the Governor alone.

88AA Oath of office

S. 88AA
inserted by
No. 46/1998
s. 7(Sch. 1).

If an oath of office is required to be taken by a person who accepts employment in the public service or who is otherwise required by or under this or any other Act to take an oath of office, the oath, unless the contrary intention appears, must be taken in the form set out in Schedule 3.

88A Governor in Council may order that Ministers exercise duties etc. concurrently

S. 88A
inserted by
No. 9721 s. 3.

The Governor in Council may by Order published in the Government Gazette direct that all or any of the functions powers and duties of a Minister of the Crown shall be exercisable concurrently with another Minister of the Crown or shall cease to be so exercisable.

s. 88B

Pt 4A
(Heading and
ss 88B, 88C)
inserted by
No. 13/1997
s. 5.

PART IVA—COMMISSIONS AND BOARDS OF INQUIRY

S. 88B
inserted by
No. 13/1997
s. 5.

88B Commission of Inquiry

The Governor in Council has, and is to be taken always to have had, the power to issue a commission to a person or persons to make an inquiry into such matters as are specified by the Governor in Council.

S. 88C
inserted by
No. 13/1997
s. 5.

88C Board of Inquiry

The Governor in Council has, and is to be taken always to have had, the power to appoint a board for the purpose of inquiring into such matters as are specified by the Governor in Council.

PART V—FINANCIAL

Division 1—Consolidated revenue

89 Consolidated Revenue

Constitution
Act s. XLIV.

All taxes imposts rates and duties and all territorial casual and other revenues of the Crown in right of the State of Victoria (including royalties) which the Parliament has power to appropriate shall form one Consolidated Revenue to be appropriated for the public service of Victoria in the manner and subject to the charges hereinafter mentioned.

90 Charges of collection and management

Constitution
Act s. XLV.

The Consolidated Revenue shall be permanently charged with all the costs charges and expenses incidental to the collection management and receipt thereof such costs charges and expenses being subject nevertheless to be reviewed and audited in such manner as shall be directed by any Act of the Parliament.

91 Her Majesty not entitled to Crown revenues

Constitution
Act s. XLVII.

Her Majesty shall not be entitled to any territorial casual or other revenues of the Crown (including royalties) from any source whatsoever accruing to the Crown in right of the State of Victoria.

92 Power to appropriate Consolidated Revenue

Constitution
Act s. LV.

The Consolidated Revenue arising from taxes duties rates and imposts levied by virtue of an Act and from the disposal of the waste lands of the Crown under any such Act made in pursuance of the authority herein contained shall be subject to be appropriated to such specific purposes as by any Act shall be provided in that behalf.

Constitution
Act s. LVIII.

93 Warrants for issue of money

No part of the Consolidated Fund shall be issued or shall be made issuable except in pursuance of warrants under the hand of the Governor directed to the Treasurer of Victoria.

Division 2—Expenses of Executive Council Legislative Council and Legislative Assembly

No. 6224 s. 66.

94 Special appropriations for expenses of Executive Council, Legislative Council and Legislative Assembly

(1) There shall be payable in every year to Her Majesty out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly)—

S. 94(1)(a)
amended by
Nos 9087 s. 2,
9730 s. 2.

(a) for the Clerk and expenses of the Executive Council a sum not exceeding \$50 000;

S. 94(1)(b)
amended by
No. 20/2005
s. 36(1)(a).

(b) for the Clerk of the Parliaments the sum of \$2000;

S. 94(1)(c)
amended by
No. 20/2005
s. 36(1)(b).

(c) for the Clerk and expenses of the Council a sum not exceeding \$200 000; and

S. 94(1)(d)
amended by
No. 20/2005
s. 36(1)(c).

(d) for the Clerk and expenses of the Assembly a sum not exceeding \$550 000.

S. 94(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) The said sums shall be issued by the Minister administering Part 7 of the **Financial Management Act 1994** in discharge of such warrants as shall from time to time be directed to him by the Governor.

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S. 94(3)
amended by
No. 8834
s. 3(a),
repealed by
No. 20/2005
s. 36(2).

S. 94(4)
amended by
No. 8834
s. 3(b),
repealed by
No. 20/2005
s. 36(2).

Division 3—Auditor-General

Pt 5 Div. 3
(Heading and
ss 94A–94C)
inserted by
No. 53/1999
s. 3.

94A Auditor-General

S. 94A
inserted by
No. 53/1999
s. 3.

- (1) There is to be an Auditor-General for the State of Victoria.
- (2) The Auditor-General is to be appointed by the Governor in Council on the recommendation of the Parliamentary Committee.
- (3) The Auditor-General—
 - (a) holds office, subject to this Division, on the terms and conditions determined by the Governor in Council; and
 - (b) is entitled to the remuneration determined by the Governor in Council; and
 - (c) is not subject to the **Public Sector Management and Employment Act 1998**, except section 16 of that Act.
- (4) The Auditor-General must not directly or indirectly engage in any paid employment outside the duties of the office.

- (5) Before undertaking the duties of office, the Auditor-General must take an oath of office before the Executive Council.
- (6) The remuneration of the Auditor-General is to be paid out of the Consolidated Fund, which is appropriated to the necessary extent.
- (7) Nothing in this section authorises the remuneration of the Auditor-General to be reduced.

S. 94B
inserted by
No. 53/1999
s. 3.

94B Independence of the Auditor-General

- (1) The Auditor-General is an independent officer of the Parliament.
- (2) The functions, powers, rights, immunities and obligations of the Auditor-General are as specified in this Act, the **Audit Act 1994** and other laws of the State.
- (3) There are no implied functions, powers, rights, immunities or obligations arising from the Auditor-General being an independent officer of the Parliament.
- (4) The powers of the Parliament to act in relation to the Auditor-General are as specified in or applying under this Act, the **Audit Act 1994** and other laws of the State.
- (5) There are no implied powers of the Parliament arising from the Auditor-General being an independent officer of the Parliament.
- (6) Subject to this Act, the **Audit Act 1994** and other laws of the State, the Auditor-General has complete discretion in the performance or exercise of his or her functions or powers and, in particular, is not subject to direction from anyone in relation to—
 - (a) whether or not a particular audit is to be conducted;

- (b) the way in which a particular audit is to be conducted;
 - (c) the priority to be given to any particular matter.
- (7) In subsection (4), *Parliament* includes each House of the Parliament, the members of each House, the committees of each House and joint committees of both Houses.

94C Tenure of office

S. 94C
inserted by
No. 53/1999
s. 3.

- (1) Subject to this section, the Auditor-General—
 - (a) holds office for 7 years; and
 - (b) is eligible for re-appointment.
- (2) The Governor in Council may suspend the Auditor-General from office at any time when the Parliament is not in session.
- (3) If the Auditor-General is suspended from office, the Minister must cause to be laid before each House of the Parliament a full statement of the grounds of the suspension within 7 sitting days of that House after the suspension.
- (4) The Governor in Council must remove the suspension and restore the Auditor-General to office unless each House of the Parliament, within 20 sitting days after the statement is laid before it, passes an address praying for his or her removal from office.
- (5) The Auditor-General ceases to hold office if he or she—
 - (a) is removed from office on the presentation of an address of both Houses of the Parliament praying for his or her removal from office; or
 - (b) is suspended from office under subsection (2) and is not restored to office; or

- (c) becomes an insolvent under administration;
or
 - (d) nominates for election for either House of
the Parliament of Victoria or for the
Parliament of the Commonwealth or of
another State or of a Territory; or
 - (e) delivers to the Governor in Council a signed
letter of resignation.
- (6) The Auditor-General is not to be suspended or
removed from office except in accordance with
this section.
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PART VA—SPECIAL PROVISIONS

Pt VA
(Heading and
ss 94E–94H)
inserted by
No. 2/2003
s. 19.

94E Independence of the Ombudsman

S. 94E
inserted by
No. 2/2003
s. 19.

- (1) The Ombudsman appointed in accordance with the **Ombudsman Act 1973** is an independent officer of the Parliament.
- (2) The functions, powers, rights, immunities and obligations of the Ombudsman are as specified in this section, the **Ombudsman Act 1973** and other laws of the State.
- (3) There are no implied functions, powers, rights, immunities or obligations arising from the Ombudsman being an independent officer of the Parliament.
- (4) The powers of the Parliament to act in relation to the Ombudsman are as specified in the **Ombudsman Act 1973**.
- (5) There are no implied powers of the Parliament arising from the Ombudsman being an independent officer of the Parliament.
- (6) Subject to this section, the **Ombudsman Act 1973** and other laws of the State, the Ombudsman has complete discretion in the performance or exercise of his or her functions or powers.
- (7) The Ombudsman is not to be removed or suspended from office except in accordance with the provisions of sections 3 and 4 of the **Ombudsman Act 1973** as in force immediately before the commencement of section 19 of the **Constitution (Parliamentary Reform) Act 2003** or provisions substituted for those sections which have the same effect.

S. 94F
inserted by
No. 2/2003
s. 19.

94F Independence of the Electoral Commissioner

- (1) The Electoral Commissioner appointed in accordance with the **Electoral Act 2002** is an independent officer of the Parliament.
- (2) The functions, powers, rights, immunities and obligations of the Electoral Commissioner are as specified in this section, the **Electoral Act 2002** and other laws of the State.
- (3) There are no implied functions, powers, rights, immunities or obligations arising from the Electoral Commissioner being an independent officer of the Parliament.
- (4) The powers of the Parliament to act in relation to the Electoral Commissioner are as specified in the **Electoral Act 2002**.
- (5) There are no implied powers of the Parliament arising from the Electoral Commissioner being an independent officer of the Parliament.
- (6) Subject to this section, the **Electoral Act 2002** and other laws of the State, the Electoral Commissioner has complete discretion in the performance or exercise of his or her functions or powers.
- (7) The Electoral Commissioner is not to be removed or suspended from office except in accordance with the provisions of sections 12 and 14 of the **Electoral Act 2002** as in force immediately before the commencement of section 19 of the **Constitution (Parliamentary Reform) Act 2003** or provisions substituted for those sections which have the same effect.

94G Electoral Boundaries

S. 94G
inserted by
No. 2/2003
s. 19.

There is to be in force at all times as part of the laws of Victoria an Act that provides for—

- (a) the constitution of an Electoral Boundaries Commission as specified in section 3 of the **Electoral Boundaries Commission Act 1982** as in force immediately before the commencement of section 19 of the **Constitution (Parliamentary Reform) Act 2003** or provisions substituted for that section 3 which have the same effect; and
- (b) the Electoral Boundaries Commission to have the function specified in section 5 of the **Electoral Boundaries Commission Act 1982** as in force immediately after the commencement of section 45 of the **Constitution (Parliamentary Reform) Act 2003** or provisions substituted for that section 5 which have the same effect; and
- (c) the Electoral Boundaries Commission to perform the function referred to in paragraph (b) in accordance with the factors specified in section 5 of the **Electoral Boundaries Commission Act 1982** as in force immediately after the commencement of section 45 of the **Constitution (Parliamentary Reform) Act 2003** or provisions substituted for that section 5 which have the same effect.

S. 94H
inserted by
No. 2/2003
s. 19.

94H Access to information

There is to be in force at all times as part of the laws of Victoria an Act the objectives and functions of which are to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information by creating a general right of access to information in documentary form in the possession of Ministers and agencies limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies.

**PART VI—RELATION OF PUBLIC OFFICERS TO
POLITICAL AFFAIRS**

**95 Officers in the public service not to take part in
political affairs**

No. 6224
s. 415.

- (1) A person employed in any capacity (whether permanently or temporarily) in the service of the State of Victoria shall not—
- (a) publicly comment upon the administration of any department of the State of Victoria;
 - (b) use except in or for the discharge of his official duties any information gained by or conveyed to him through his connexion with the public service; or
 - (c) directly or indirectly use or attempt to use any influence with respect to the remuneration or position of himself or of any person in the public service.
- (2) Any person who contravenes this section shall on proof thereof to the satisfaction of body or person to which or whom he is subject in matters of discipline (as the case requires) be liable to a fine not exceeding \$100 and in addition to such fine may be reduced in class subdivision grade status or salary or dismissed or have his services dispensed with.

S. 95(2)
amended by
Nos 9788
s. 3(1)(b)(i),
9921 s. 255,
2/1990 s. 7(2),
46/1998
s. 7(Sch. 1).

(3) This section—

S. 95(3)(a)
amended by
Nos 9788
s. 3(1)(b)(ii),
9921 s. 255,
10029 s. 22,
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 40),
24/2006
s. 6.1.2(Sch. 7
item 8.2).

S. 95(3)(b)
amended by
No. 24/1996
s. 34(b).

(a) shall apply to every person employed as aforesaid notwithstanding that he may not be subject to the **Public Administration Act 2004** or the **Education and Training Reform Act 2006** or the **Transport Act 1983** or the **Police Regulation Act 1958**;

(b) shall not apply to officers in the service of the Parliament, but the Governor in Council on the joint recommendation of the presiding officers may make regulations applying to such officers in relation to matters referred to herein.

PART VII—DELIVERY OF WATER SERVICES

Pt 7
(Heading and
ss 96, 97)
inserted by
No. 37/2003
s. 5.

96 Definitions

S. 96
inserted by
No. 37/2003
s. 5.

In this Part—

public authority means—

- (a) a public statutory authority; or
- (b) a Council within the meaning of the **Local Government Act 1989**; or
- (c) a company (within the meaning of the Corporations Act) all the shares in which are held by or on behalf of the State; or
- (d) an Agency Head within the meaning of the **Public Sector Management and Employment Act 1998** who is a corporation sole;

public statutory authority means a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose but does not include a company (within the meaning of the Corporations Act) in which all the shares are not held by or on behalf of the State;

water legislation means the **Water Act 1989**, the **Water Industry Act 1994** or the **Melbourne and Metropolitan Board of Works Act 1958**;

water service means a service relating to—

- (a) water supply; or
- (b) sewerage; or
- (c) irrigation; or
- (d) water collection and storage; or
- (e) sewage treatment—

for ensuring the delivery of which a public authority has responsibility under water legislation, including under a licence issued under water legislation.

S. 97
inserted by
No. 37/2003
s. 5.

97 Delivery of water services

- (1) If at any time on or after the commencement of section 5 of the **Constitution (Water Authorities) Act 2003** a public authority has responsibility for ensuring the delivery of a water service, that or another public authority must continue to have that responsibility.
- (2) A public authority that, at any time on or after the commencement of section 5 of the **Constitution (Water Authorities) Act 2003**, has responsibility for ensuring the delivery of a water service must, while it has that responsibility, be accountable to a responsible Minister of the Crown for ensuring the delivery of that service.
- (3) Nothing in this section prevents a public authority that has responsibility for ensuring the delivery of a water service entering into an arrangement of any kind with a person or body (including an independent contractor) relating to the delivery of that service while itself retaining that responsibility and remaining accountable to a responsible Minister of the Crown for ensuring the delivery of that service.

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- (4) Nothing in this section prevents the making of an alteration to the structure, composition or membership of a public authority that has responsibility for ensuring the delivery of a water service if the alteration does not affect its status or the status of a successor body as a public authority accountable to a responsible Minister of the Crown for ensuring the delivery of that service.

* * * * *

Pt 8
(Heading
and s. 96)
repealed by
No. 24/1996
s. 34(c).

Sch. 1

SCHEDULES

Sch. 1
amended by
No. 9863 s. 2,
repealed by
No. 24/1996
s. 34(c).

* * * * *

SECOND SCHEDULE²⁵

Oath

I swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law.

Affirmation

I do solemnly and sincerely affirm that I will be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law.

[If circumstances so require, His Majesty is to be substituted for Her Majesty.]

NOTE: For forms of administering oaths, see Evidence (Miscellaneous Provisions) Act 1958, section 100.

S. 23.
Sch. 2
substituted by
No. 108/1994
s. 6(2),
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 11.2).

SCHEDULE 3

Section 88AA

Sch. 3
inserted by
No. 46/1998
s. 7(Sch. 1).

OATH OF OFFICE

I (*name of deponent*) swear by almighty God that as (*name of office*) in the State of Victoria, I will at all times and in all things discharge the duties of (*name of office*) according to law and to the best of my knowledge and ability without fear, favour or affection.

ENDNOTES

1. General Information

The **Constitution Act 1975** was reserved for the Royal Assent on 20 May 1975 and assented to on 22 October 1975. Proclamation of the Royal Assent was published in the Victoria Government Gazette, 19 November 1975 and the Act came into operation on 1 December 1975: Government Gazette 26 November 1975 page 3888.

2. Table of Amendments

This Version incorporates amendments made to the **Constitution Act 1975** by Acts and subordinate instruments.

Constitution (Responsible Ministers) Act 1976, No. 8834/1976

Assent Date: 6.5.76
Commencement Date: 6.5.76
Current State: All of Act in operation

Judges Salaries Act 1976, No. 8853/1976

Assent Date: 8.6.76
Commencement Date: 8.6.76: Government Gazette 8.6.76 p. 1665
Current State: All of Act in operation

Supreme Court Act 1976, No. 8951/1976

Assent Date: 16.12.76
Commencement Date: 1.1.77: Government Gazette 22.12.76 p. 3739
Current State: All of Act in operation

Judges Salaries Act 1977, No. 9063/1977

Assent Date: 29.11.77
Commencement Date: 30.11.77: Government Gazette 30.11.77 p. 3646
Current State: All of Act in operation

Constitution Act 1977, No. 9077/1977

Assent Date: 6.12.77
Commencement Date: All of Act (*except* s. 2) on 6.12.77: s. 1(3); s. 2 on 24.1.79: Government Gazette 24.1.79 p. 202
Current State: All of Act in operation

Constitution Act 1978, No. 9087/1978

Assent Date: 11.4.78
Commencement Date: 11.4.78
Current State: All of Act in operation

Judges Salaries Act 1978, No. 9176/1978

Assent Date: 31.10.78
Commencement Date: 8.11.78: Government Gazette 8.11.78 p. 3496
Current State: All of Act in operation

Constitution (Governor's Pension) Act 1978, No. 9251/1978

Assent Date: 6.2.79 (reserved for the Royal Assent on 5.12.78)
Commencement Date: 14.3.79: Government Gazette 14.3.79 p. 681
Current State: All of Act in operation

Constitution (Local Government) Act 1979, No. 9254/1979

Assent Date: 20.6.79
Commencement Date: S. 2 on 1.10.79: Government Gazette 26.9.79 p. 2997
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution Act 1975
No. 8750 of 1975

Endnotes

Judges Salaries Act 1979, No. 9293/1979

Assent Date: 31.10.79
Commencement Date: 31.10.79
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80: subject to s. 6(2)
Current State: All of Act in operation

Judges' Salaries and Pensions Act 1980, No. 9468/1980

Assent Date: 16.12.80
Commencement Date: 16.12.80
Current State: All of Act in operation

Crimes (Classification of Offences) Act 1981, No. 9576/1981

Assent Date: 26.5.81
Commencement Date: 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Constitution (Parliamentary Oaths) Act 1981, No. 9695/1981

Assent Date: 5.1.82
Commencement Date: 5.1.82
Current State: All of Act in operation

Constitution Act 1981, No. 9721/1981

Assent Date: 19.1.82
Commencement Date: 19.1.82
Current State: All of Act in operation

Constitution (Executive Council Expenses) Act 1982, No. 9730/1982

Assent Date: 29.6.82
Commencement Date: 29.6.82
Current State: All of Act in operation

Parliamentary Committees (Joint Investigatory Committees) Act 1982, No. 9765/1982

Assent Date: 13.7.82
Commencement Date: 25.8.82: Government Gazette 25.8.82 p. 2793
Current State: All of Act in operation

Constitution (Governor's Salary) Act 1982, No. 9773/1982

Assent Date: 1.9.82 (reserved for Royal Assent on 16.6.82)
Commencement Date: 1.9.82
Current State: All of Act in operation

Education Service (Amendment) Act 1982, No. 9788/1982

Assent Date: 9.11.82
Commencement Date: All of Act (*except* ss 3, 4, 13, 15) on 9.11.82:
s. 1(2); s. 3 on 24.3.82: s. 3(2); s. 4 on 24.3.82:
s. 4(2); s. 13 on 24.3.82: s. 13(5); s. 15 on 24.3.82:
s. 15(3)
Current State: All of Act in operation

Judges Salaries Act 1982, No. 9813/1982

Assent Date: 14.12.82
Commencement Date: Ss 2, 4 on 14.11.82: s. 1(2); rest of Act on 1.1.83:
s. 1(2)
Current State: All of Act in operation

Constitution (Qualification of Electors) Act 1982, No. 9826/1982

Assent Date: 21.12.82
Commencement Date: 26.1.84: Government Gazette 16.11.83 p. 3679
Current State: All of Act in operation

Statute Law Revision (Repeals) Act 1982, No. 9863/1982

Assent Date: 5.1.83
Commencement Date: 5.1.83
Current State: All of Act in operation

Constitution (Local Government) Act 1983, No. 9870/1983

Assent Date: 27.4.83
Commencement Date: 27.4.83
Current State: All of Act in operation

Constitution (Electoral Provinces and Districts) Act 1983, No. 9892/1983

Assent Date: 31.5.83
Commencement Date: 31.5.83 (except ss 2(1), 3(1)—see ss 2(2), 3(2))
Current State: All of Act in operation

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83 subject to s. 2(2)
Current State: All of Act in operation

Transport Act 1983, No. 9921/1983

Assent Date: 23.6.83
Commencement Date: S. 255(Sch. 12) on 1.7.83: s. 1(2)(c)
Current State: This information relates only to the provision/s
amending the **Constitution Act 1975**

Constitution (Corporations' Franchise) Act 1983, No. 9937/1983

Assent Date: 9.12.83
Commencement Date: 27.4.83: s. 1(2)
Current State: All of Act in operation

Constitution (Judges) Act 1983, No. 9959/1983

Assent Date: 22.11.83
Commencement Date: 22.11.83
Current State: All of Act in operation

Teaching Service Act 1983, No. 10029/1983

Assent Date: 20.12.83
Commencement Date: S. 22 on 23.2.84: Government Gazette 22.2.84
p. 614
Current State: This information relates only to the provision/s
amending the **Constitution Act 1975**

Constitution Act 1975
No. 8750 of 1975

Endnotes

Interpretation of Legislation Act 1984, No. 10096/1984

Assent Date: 22.5.84
Commencement Date: 1.7.84: s. 2
Current State: All of Act in operation

Constitution (Duration of Parliament) Act 1984, No. 10106/1984

Assent Date: 25.9.84
Commencement Date: 1.1.85: s. 1(2)
Current State: All of Act in operation

**The Constitution Act Amendment (Electoral Legislation) Act 1984,
No. 10146/1984**

Assent Date: 13.11.84
Commencement Date: S. 7 on 22.11.84: Government Gazette 21.11.84
p. 4104; ss 4, 5 on 1.1.85: Government Gazette
5.12.84 p. 4265
Current State: This information relates only to the provision/s
amending the **Constitution Act 1975**

**Registration of Births Deaths and Marriages (Amendment) Act 1985,
No. 10244/1985**

Assent Date: 10.12.85
Commencement Date: 31.10.86: Government Gazette 29.10.86 p. 4114
Current State: All of Act in operation

Constitution (Governor's Salary and Pension) Act 1985, No. 1/1986

Assent Date: 22.1.86
Commencement Date: 22.1.86
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

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

Constitution (British Subjects) Act 1986, No. 61/1986

Assent Date: 16.9.86
Commencement Date: 27.5.87: Government Gazette 27.5.87 p. 1235
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Corrections Act 1986, No. 117/1986

Assent Date: 23.12.86
Commencement Date: S. 6(Sch. 1 item 5) on 6.5.87: Government Gazette
6.5.87 p. 1004
Current State: This information relates only to the provision/s
amending the **Constitution Act 1975**

Judicial Salaries Act 1987, No. 4/1987

Assent Date: 31.3.87
Commencement Date: 3.6.87: Government Gazette 3.6.87 p. 1040
Current State: All of Act in operation

Equal Opportunity (Amendment) Act 1987, No. 46/1987

Assent Date: 25.8.87
Commencement Date: 1.12.87: Government Gazette 21.10.87 p. 2777
Current State: All of Act in operation

State Concessions (Amendment) Act 1987, No. 48/1987

Assent Date: 15.9.87
Commencement Date: 1.12.87: Government Gazette 18.11.87 p. 3072
Current State: All of Act in operation

Constitution (Local Government) Act 1988, No. 55/1988

Assent Date: 16.8.88
Commencement Date: 1.11.89: Government Gazette 1.11.89 p. 2799
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Education (Amendment) Act 1990, No. 2/1990

Assent Date: 27.3.90
Commencement Date: Ss 1–3, 7, 9 on 27.3.90: s. 2(2); rest of Act on 4.4.90: Government Gazette 4.4.90 p. 1007
Current State: All of Act in operation

Courts (Amendment) Act 1990, No. 64/1990

Assent Date: 20.11.90
Commencement Date: S. 19 on 20.9.89: s. 2(2); rest of Act (*except* ss 13, 14) on 1.1.91: Government Gazette 19.12.90 p. 3750; s. 13 on 1.6.91: Government Gazette 15.5.91 p. 1274; s. 14 on 18.11.91: Government Gazette 13.11.91 p. 3083
Current State: All of Act in operation

Constitution (Jurisdiction of Supreme Court) Act 1991, No. 35/1991

Assent Date: 18.6.91
Commencement Date: S. 6 on 1.7.89: s. 2(1); rest of Act on 18.6.91: s. 2(2)
Current State: All of Act in operation

Courts (Case Transfer) Act 1991, No. 43/1991

Assent Date: 18.6.91
Commencement Date: S. 2, Pt 9 (ss 39–41) on 1.8.91; rest of Act on 1.10.91: Government Gazette 17.7.91 p. 1930
Current State: All of Act in operation

Constitution Act 1975
No. 8750 of 1975

Endnotes

Constitution (Governor's Salary) Act 1992, No. 5/1992

Assent Date: 5.5.92
Commencement Date: 5.5.92
Current State: All of Act in operation

Constitution (Ministers) Act 1992, No. 59/1992

Assent Date: 9.11.92
Commencement Date: 9.11.92
Current State: All of Act in operation

Accident Compensation (WorkCover) Act 1992, No. 67/1992

Assent Date: 19.11.92
Commencement Date: Ss 1–3 on 19.11.92: s. 2(2); ss 26, 49 on 1.7.93: s. 2(3); s. 63(2) on 29.10.92: s. 2(4); rest of Act (except s. 36(1)) on 1.12.92: s. 2(1); s. 36(1) was never proclaimed, repealed by s. 111(1)(a) of No. 50/1993; s. 42 repealed by No. 50/1993 s. 111(1)(b)
Current State: All of Act in operation

Constitution (Governor's Powers) Act 1992, No. 70/1992

Assent Date: 24.11.92
Commencement Date: 5.00 a.m. Greenwich Mean Time on 3.3.86: same day and time as the Australia Act 1986 of the Commonwealth All of Act on same day and time as the Australia Act 1986 of the Commonwealth—see 1986 Commonwealth Gazette No. s. 85 p. 1.
Current State: All of Act in operation

Financial Management Act 1994, No. 18/1994

Assent Date: 10.5.94
Commencement Date: S. 66(Sch. 2 item 3) on 1.7.94: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Public Prosecutions Act 1994, No. 43/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3) on 7.6.94: s. 2(2); rest of Act on 1.7.94: s. 2(3)
Current State: All of Act in operation

Accident Compensation (Amendment) Act 1994, No. 50/1994

Assent Date: 15.6.94
Commencement Date: S. 65(2) on 15.6.94: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Amendment) Act 1994, No. 108/1994

Assent Date: 20.12.94
Commencement Date: All of Act (except s. 11) on 20.12.94: s. 2(1); s. 11 immediately after the commencement of the Australia Act 1986 of the Commonwealth, 5.00 a.m. Greenwich Mean Time on 3.3.86
Current State: All of Act in operation

Constitution Act 1975
No. 8750 of 1975

Endnotes

Constitution (Court of Appeal) Act 1994, No. 109/1994 (as amended by No. 22/1995)

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: S. 7(1)–(4) on 27.4.95: Government Gazette 27.4.95 p. 973
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Judicial Remuneration Tribunal Act 1995, No. 22/1995

Assent Date: 16.5.95
Commencement Date: S. 18 on 18.5.95: Government Gazette 18.5.95 p. 1179; ss 16, 17, 19 on 28.9.95: Government Gazette 28.9.95 p. 2731
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Public Prosecutions (Amendment) Act 1995, No. 36/1995

Assent Date: 6.6.95
Commencement Date: 6.6.95
Current State: All of Act in operation

Accident Compensation (Amendment) Act 1996, No. 7/1996

Assent Date: 25.6.96
Commencement Date: S. 50(2) on 25.6.96: Special Gazette (No. 71) 25.6.96 p. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Public Sector Management and Parliamentary Officers (Amendment) Act 1996, No. 24/1996

Assent Date: 2.7.96
Commencement Date: S. 34 on 2.7.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 11.1–11.3) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Births, Deaths and Marriages Registration Act 1996, No. 43/1996

Assent Date: 26.11.96
Commencement Date: S. 65(Sch. item 4.1) on 2.10.97: Government Gazette 2.10.97 p. 2731
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution Act 1975
No. 8750 of 1975

Endnotes

Accident Compensation (Further Amendment) Act 1996, No. 60/1996

Assent Date: 17.12.96
Commencement Date: S. 30(2) on 14.11.96: s. 2(3)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution and Parliamentary Committees (Amendment) Act 1997, No. 13/1997

Assent Date: 6.5.97
Commencement Date: S. 3 on 20.12.94: s. 2(2); rest of Act on 6.5.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Amendment) Act 1997, No. 95/1997

Assent Date: 16.12.97
Commencement Date: 16.12.97
Current State: All of Act in operation

Accident Compensation (Miscellaneous Amendment) Act 1997, No. 107/1997

Assent Date: 23.12.97
Commencement Date: S. 63 on 23.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

The Constitution Act Amendment (Amendment) Act 1999, No. 24/1999

Assent Date: 25.5.99
Commencement Date: 8.6.99: s. 2
Current State: All of Act in operation

Audit (Amendment) Act 1999, No. 53/1999

Assent Date: 14.12.99
Commencement Date: Ss 3–5 on 1.1.2000: Government Gazette 23.12.99 p. 2764
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Public Prosecutions (Amendment) Act 1999, No. 62/1999

Assent Date: 21.12.99
Commencement Date: 22.12.99: s. 2
Current State: All of Act in operation

Courts and Tribunals Legislation (Amendment) Act 2000, No. 1/2000

Assent Date: 28.3.00
Commencement Date: S. 3 on 1.7.00: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution Act 1975
No. 8750 of 1975

Endnotes

Corporations (Commonwealth Powers) Act 2001, No. 6/2001

Assent Date: 8.5.01
Commencement Date: S. 10 on 21.6.01: Government Gazette 21.6.01 p. 1339
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Supreme Court) Act 2001, No. 12/2001

Assent Date: 22.5.01
Commencement Date: Ss 3, 4 on 23.5.01: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Judicial and Other Pensions Legislation (Amendment) Act 2001, No. 19/2001

Assent Date: 29.5.01
Commencement Date: Ss 4–10 on 30.5.01: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Metropolitan Ambulance Service Royal Commission Report) Act 2001, No. 40/2001

Assent Date: 27.6.01
Commencement Date: 28.6.01: s. 2
Current State: All of Act in operation

Judicial Remuneration Tribunal (Amendment) Act 2002, No. 4/2002

Assent Date: 3.4.02
Commencement Date: S. 12(1) on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Governor's Salary) Act 2002, No. 8/2002

Assent Date: 23.4.02
Commencement Date: 24.4.02: s. 2
Current State: All of Act in operation

Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 189 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Parliamentary Reform) Act 2003, No. 2/2003

Assent Date: 8.4.03
Commencement Date: Ss 3–7, 12–19 on 8.4.03: Special Gazette (No. 57) 8.4.03 p. 1; ss 8–11, 49 on 31.10.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Water Authorities) Act 2003, No. 37/2003

Assent Date: 11.6.03
Commencement Date: Ss 4, 5 on 12.6.03: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution Act 1975
No. 8750 of 1975

Endnotes

Courts Legislation (Amendment) Act 2003, No. 39/2003

Assent Date: 11.6.03
Commencement Date: S. 3 on 1.5.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Supreme Court) Act 2003, No. 66/2003

Assent Date: 14.10.03
Commencement Date: Ss 3–5 on 15.10.03: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Parliamentary Committees Act 2003, No. 110/2003

Assent Date: 9.12.03
Commencement Date: S. 55 on 10.12.03: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Judicial Salaries Act 2004, No. 38/2004

Assent Date: 8.6.04
Commencement Date: S. 12 on 9.6.04: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Mitcham-Frankston Project Act 2004, No. 39/2004

Assent Date: 8.6.04
Commencement Date: S. 259 on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Recognition of Aboriginal People) Act 2004, No. 73/2004

Assent Date: 9.11.04
Commencement Date: Ss 3, 4 on 10.11.04: s. 2
Current State: All of Act in operation

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: Ss 114, 117(1)(Sch. 3 item 40) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Courts Legislation (Judicial Appointments and Other Amendments) Act 2005, No. 3/2005

Assent Date: 5.4.05
Commencement Date: S. 14 on 6.4.05: s. 2(1); ss 3–5 on 1.5.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution Act 1975
No. 8750 of 1975

Endnotes

Courts Legislation (Judicial Conduct) Act 2005, No. 16/2005 (as amended by No. 14/2006)

Assent Date: 24.5.05
Commencement Date: Ss 3–5 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 **Constitution Act 1975**

Parliamentary Administration Act 2005, No. 20/2005

Assent Date: 24.5.05
Commencement Date: S. 36 on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Transport Legislation (Further Amendment) Act 2005, No. 25/2005

Assent Date: 31.5.05
Commencement Date: S. 16 on 31.5.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Courts Legislation (Miscellaneous Amendments) Act 2005, No. 30/2005

Assent Date: 21.6.05
Commencement Date: S. 4 on 22.6.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Electoral Legislation (Further Amendment) Act 2005, No. 38/2005

Assent Date: 27.7.05
Commencement Date: Ss 14, 15 on 28.7.05: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

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

Assent Date: 11.4.06
Commencement Date: S. 6 on 1.5.05: s. 2(2); ss 4, 5, 7 on 12.4.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 8) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Electoral and Parliamentary Committees Legislation (Amendment) Act 2006, No. 44/2006

Assent Date: 25.7.06
Commencement Date: S. 23 on 26.7.06: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Courts Legislation Amendment (Judicial Education and Other Matters) Act 2007, No. 24/2007

Assent Date: 26.6.07
Commencement Date: Ss 8, 9, 10(1) on 27.6.07: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution Amendment (Judicial Pensions) Act 2008, No. 23/2008

Assent Date: 3.6.08
Commencement Date: Ss 3–8 on 4.6.08: s. 2(1); s. 22 on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

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

Assent Date: 3.6.08
Commencement Date: Ss 3–12 on 17.12.08: Special Gazette (No. 377) 16.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Courts Legislation Amendment (Juries and Other Matters) Act 2008, No. 38/2008

Assent Date: 26.8.08
Commencement Date: S. 3 on 27.8.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Salaries Legislation Amendment (Salary Sacrifice) Act 2008, No. 83/2008

Assent Date: 11.12.08
Commencement Date: Ss 3–5 on 11.12.08: s. 2(1); s. 6 on 17.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 7) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Superannuation Legislation Amendment Act 2009, No. 38/2009

Assent Date: 30.6.09
Commencement Date: Ss 17–19 on 1.7.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution (Appointments) Act 2009, No. 70/2009

Assent Date: 1.12.09
Commencement Date: S. 7 on 2.12.09: s. 2
Current State: This information relates only to the provision/s amending the **Constitution Act 1975**

Constitution Act 1975
No. 8750 of 1975

Endnotes

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

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 25) on 1.1.10: Government Gazette
10.12.09 p. 3215
Current State: This information relates only to the provision/s
amending the **Constitution Act 1975**

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

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 11) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Constitution Act 1975**

3. Explanatory Details

¹ S. 1: Section 9 of the **Constitution (Amendment) Act 1994**, No. 108/1994 reads as follows:

9 Transitional

Anything done or purporting to have been done after the Australia Act 1986 of the Commonwealth came into operation and before the commencement of Part 2 of this Act is valid to the extent that—

- (a) it was valid when done or purported to be done; or
- (b) it would have been valid if, when done or purported to be done, the Principal Act had been in operation as amended by Part 2 of this Act.

² S. 3(1): Now see **Imperial Acts Application Act 1980**, No. 9426/1980.

³ S. 6: See note 1.

⁴ S. 6: Sections 7, 8 of the **Constitution (Amendment) Act 1994**, No. 108/1994 read as follows:

7 Letters Patent and Instructions cease to have effect

- (1) The Letters Patent dated 29 October 1900, as amended, and the Letters Patent dated 14 February 1986, relating to the office of Governor of the State and all Instructions to the Governor cease to have effect on the commencement of this section.
- (2) Despite subsection (1), anything done or purporting to have been done before the commencement of this section pursuant to the terms of the Letters Patent or Instructions is, and continues to be, as valid and effective as if, at all relevant times, the Letters Patent and Instructions were valid and effective in all respects.

**8 Continuation of existing Commissions,
appointments etc.**

- (1) Any existing Commission or appointment given or made pursuant to Letters Patent or pursuant to Instructions referred to in section 7 continues in force until revoked or terminated.
- (2) A person who holds office under any such Commission or appointment as—
 - (a) the Governor;
 - (b) the Lieutenant-Governor;
 - (c) the Administrator;
 - (d) a Minister;
 - (e) a member of the Executive Council—is deemed, on the commencement of this section, to have been appointed to that office under the Principal Act.
- (3) This Act does not affect anything done under any such Commission or appointment.
- (4) A person holding office under any such Commission or appointment is deemed to have taken the Oaths or Affirmations required by law before acting in that office.
- (5) Any oath or affirmation taken, or deemed to have been taken, before the commencement of this section for the purposes of any such Commission or appointment is deemed to have been taken pursuant to the Principal Act.
- (6) Subsection (1) does not continue in force a provision of any such Commission or appointment that is inconsistent with any law.

⁵ S. 6A: See note 1.

⁶ S. 6B: See note 1.

⁷ S. 6C: See note 1.

⁸ S. 6D: See note 1.

⁹ S. 12A (*repealed*):

Governor's Deputy's Powers Act 1916, No. 2898/1916 repealed by and consolidated into **The Constitution Act Amendment Act 1928**, No. 3660 s. 9.

It remained as section 9 in **The Constitution Act Amendment Act 1958**, No. 6224/1958.

The **Constitution Act 1975**, No. 8750/1975 repealed section 9 of **The Constitution Act Amendment Act 1958**, and inserted a similar provision as section 14A of the **Acts Interpretation Act 1958**, No. 6189/1958.

The **Interpretation of Legislation Act 1984**, No. 10096/1984 repealed the **Acts Interpretation Act 1958**, No. 6189/1958 and inserted a provision similar to section 14A as section 12A of the **Constitution Act 1975**, No. 8750/1975.

Section 12A was substituted by section 3 of the **Constitution (Governor's Powers) Act 1992**, No. 70/1992. Section 4 of the **Constitution (Governor's Powers) Act 1992**, No. 70/1992 reads as follows:

4 Exercise of powers

Any power of the Governor exercised or purporting to have been exercised by a person acting as Governor or Deputy Governor (however described) on or after the commencement of the Australia Act 1986 of the Commonwealth and before the enactment of this Act continues to be, or is to be taken to be, as valid and effective as it would have been if this Act had been in operation when the person exercised, or purported to exercise, the power.

¹⁰ S. 63: Sections 4(2)(3) and 7 of the **Constitution and Parliamentary Committees (Amendment) Act 1997**, No. 13/1997 read as follows:

4 Amendment of section 63

- (2) The enactment or validity of an Act enacted or purporting to have been enacted before the commencement of this section shall not be called in question in any proceeding in any court or tribunal on the ground that the Bill for the Act was a Bill for appropriating any part of the Consolidated Fund or of any duty, rate, tax, rent, return or impost and was originated by the Legislative Assembly before the purpose of the appropriation had been recommended by a message of the Governor to the Legislative Assembly.
- (3) Anything done or omitted to be done under the authority or purported authority of an Act to which subsection (2) applies shall not be called in question on the ground referred to in that subsection.

7 Supreme Court—limitation of jurisdiction

It is the intention of section 4 to alter or vary section 85 of the **Constitution Act 1975**.

¹¹ S. 74AB: This section was repealed on 16 August 2001—the day that was the first sitting day of the Legislative Assembly after the day on which the **Constitution (Metropolitan Ambulance Service Royal Commission Report) Act 2001**, No. 40/2001 received the Royal Assent.

¹² S. 75: Section 29 of the **Constitution (Court of Appeal) Act 1994**, No. 109/1994 reads as follows:

29 Proceedings before Full Court

- (1) The **Constitution Act 1975**, the **Supreme Court Act 1986** and the **Crimes Act 1958** and any other Act amended by this Act as respectively in force immediately before the commencement of this section continue to apply, despite the enactment of

this Act, to a proceeding the hearing of which by the Full Court of the Supreme Court commenced before the commencement of this section.

- (2) If the Court of Appeal so orders, anything required to be done by the Supreme Court in relation to or as a consequence of a proceeding after the Full Court has delivered judgment in that proceeding, may be done by the Court of Appeal.

¹³ S. 75A: See note 12.

¹⁴ S. 85(5): See the **Constitution (Supreme Court) Act 1989**, No. 22/1989 and section 7 of the **Constitution (Jurisdiction of Supreme Court) Act 1991**, No. 35/1991.

¹⁵ S. 85(6): See note 14.

¹⁶ S. 85(7): See note 14.

¹⁷ S. 85(8): See note 14.

¹⁸ S. 85(8B): See note 11.

¹⁹ S. 87A: See note 1.

²⁰ S. 87A: See note 4.

²¹ S. 87B: See note 1.

²² S. 87C: See note 1.

²³ S. 87D: See note 1.

²⁴ S. 87E: See note 1.

²⁵ Sch. 2: See note 1.