

PARLIAMENT OF VICTORIA

**Justice Legislation Miscellaneous Amendments
Bill 2019**

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Justice Legislation Miscellaneous Amendments Bill 2019

A Bill for an Act to amend the **Criminal Procedure Act 2009**, the **Evidence Act 2008**, the **Evidence (Miscellaneous Provisions) Act 1958**, the **Local Government Act 1989**, the **Magistrates' Court Act 1989**, the **Oaths and Affirmations Act 2018**, the **Professional Standards Act 2003**, the **Sentencing Act 1991** and the **Supreme Court Act 1986** and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- 5 (a) to amend the **Supreme Court Act 1986** to make further provision about costs in group proceedings and to make other minor amendments to that Act; and

Part 1—Preliminary

- 5 (b) to amend the **Local Government Act 1989**
to provide for the effect of the purported
exercise of functions, powers or duties by
certain bodies and for related matters; and
- 10 (c) to amend the **Magistrates' Court Act 1989**
to provide for the effect of acts or decisions
of certain persons purporting to occupy the
office of reserve magistrate and for related
matters; and
- 15 (d) to make minor and technical amendments to
the **Criminal Procedure Act 2009**, the
Evidence Act 2008, the **Evidence**
(Miscellaneous Provisions) Act 1958, the
Oaths and Affirmations Act 2018, the
Professional Standards Act 2003 and the
Sentencing Act 1991.

2 Commencement

20 This Act comes into operation on the day after the
day on which it receives the Royal Assent.

Part 2—Amendment of Supreme Court Act 1986

3 Statute law revision

5 In section 33A of the **Supreme Court Act 1986**,
in the definition of *Chapter I of the Rules*, for
"2005" substitute "2015".

4 Costs

At the end of section 33ZD of the **Supreme
Court Act 1986**, insert—
10 "(2) Subsection (1)(b) is subject to any order
made under section 33ZDA."

5 New section 33ZDA inserted

After section 33ZD of the **Supreme Court
Act 1986** insert—
15 "**33ZDA Group costs orders**
(1) On application by the plaintiff in any group
proceeding, the Court, if satisfied that it is
appropriate or necessary to ensure that
justice is done in the proceeding, may make
20 an order—
(a) that the legal costs payable to the law
practice representing the plaintiff and
group members be calculated as a
percentage of the amount of any award
or settlement that may be recovered in
the proceeding, being the percentage set
out in the order; and
25 (b) that liability for payment of the legal
costs must be shared among the
30 plaintiff and all group members.

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- (2) If a group costs order is made—
 - (a) the law practice representing the plaintiff and group members is liable to pay any costs payable to the defendant in the proceeding; and
 - (b) the law practice representing the plaintiff and group members must give any security for the costs of the defendant in the proceeding that the Court may order the plaintiff to give.
 - (3) The Court, by order during the course of the proceeding, may amend a group costs order, including, but not limited to, amendment of any percentage ordered under subsection (1)(a).
 - (4) This section has effect despite anything to the contrary in the Legal Profession Uniform Law (Victoria).
 - (5) In this section—

group costs order means an order made under subsection (1);

legal costs has the same meaning as in the Legal Profession Uniform Law (Victoria)."

Part 3—Amendment of Local Government Act 1989

6 New section 252 inserted

After section 251 of the **Local Government Act 1989** insert—

"252 Purported exercise or functions, powers or duties of Municipal Electoral Tribunals and related matters

- (1) Any act or omission done or omitted to be done by a relevant body during the relevant period in the purported exercise of any function, power or duty of the relevant body under Division 8 of Part 3 as in force during the relevant period has the same force and effect as it would have had if the relevant body had been validly established under Division 8 of Part 3 as so in force.
- (2) Clause 6(1) of Schedule 4, as in force during the relevant period, is taken to have applied and to continue to apply to a person in relation to the purported exercise by that person of a duty of a member of a Tribunal (within the meaning of that subclause), being a duty to which subsection (1) applies.

- (3) In this section—

relevant body means any body that was purported to be established under section 44(1) as in force during the relevant period, but was not validly established under that subsection;

relevant period means the period commencing on 30 October 1996 and ending on 16 February 2018."

Part 4—Amendment of Magistrates' Court Act 1989

7 New sections 141, 142, 143 and 144 inserted

After section 140 of the **Magistrates' Court Act 1989** insert—

"141 Definitions

In this section and sections 142 and 144—

affected person means any person—

- (a) who was appointed as an acting magistrate on 19 July 2011 or 6 March 2012; and
- (b) who was taken to hold the office of reserve magistrate by the operation of clause 50 of Schedule 8 as inserted by section 40 of the **Courts Legislation Amendment (Reserve Judicial Officers) Act 2013**;

relevant period, in relation to an affected person, means any period during which the person purported to occupy the office of reserve magistrate but did not validly occupy that office.

142 Rights, duties and liabilities declared in certain cases

The rights, duties and liabilities of any person are declared to be, and always to have been the same as if each act or decision of an affected person as a purported occupant of the office of reserve magistrate during the relevant period had been an act or decision of a person who validly occupied the office of reserve magistrate.

143 Effect of declared rights, duties and liabilities

(1) A right, duty or liability to which section 142 applies—

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(a) is exercisable or enforceable; and

(b) must be regarded as always having been exercisable or enforceable—

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as if it were a right, duty or liability conferred, imposed or affected by an act or decision of a person who validly occupied the office of reserve magistrate.

(2) Without limiting section 142 or this section, the rights, duties and liabilities conferred, imposed or affected by section 142 include the right of a person who was a party to a proceeding or purported proceeding in which a decision was made to which section 142 applies, to appeal against the decision or apply for a review of the decision.

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144 Protection of affected persons

Sections 9E and 14 are taken to have applied and to continue to apply to an affected person when purportedly exercising any duty of a reserve magistrate during the relevant period."

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Part 5—Amendment of Criminal Procedure Act 2009

Division 1—Amendments relating to intermediaries and indictable offences that may be heard and determined summarily

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8 Application of Division

For section 389F(1) of the **Criminal Procedure Act 2009 substitute—**

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"(1) This Division applies to a witness (including the complainant) other than the accused in a criminal proceeding if—

(a) the witness—

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(i) is under the age of 18 years at the time at which the proceeding commences; or

(ii) has a cognitive impairment; and

(b) the criminal proceeding is in a participating venue of a court."

9 Schedule 2 amended

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For item 4.6 of Schedule 2 to the **Criminal Procedure Act 2009 substitute—**

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"4.6 Offences under section 76 of the **Crimes Act 1958** (burglary) except an offence involving an intent to steal property, the amount or value of which in the judgment of the court exceeds \$100 000."

10 Statute law revision—section 4

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In the heading to section 4 of the **Criminal Procedure Act 2009**, for "sexual offence" substitute "*sexual offence*".

11 Statute law revision—section 389E

In the note at the foot of section 389E(2)(f) of the **Criminal Procedure Act 2009**, for "(2009) VR 531" substitute "(2009) 24 VR 531".

5 **Division 2—Other miscellaneous amendments**

12 Summary case conference

10 In section 54(7) of the **Criminal Procedure Act 2009**, for "unless all parties to the summary case conference agree to the giving of the evidence." substitute—

"unless—

- 15 (c) all parties to the summary case conference agree to the giving of the evidence; or
- (d) the proceeding is a criminal proceeding for an offence alleged to have been committed during, or in connection with, the summary case conference."

13 Section 123 substituted

20 For section 123 of the **Criminal Procedure Act 2009** substitute—

"123 No cross-examination in certain sexual offence cases

- 25 (1) This section applies to a proceeding—
- (a) that relates (wholly or partly) to a charge for a sexual offence if one or more of the complainants in the proceeding is a child or a person with a cognitive impairment; and
- 30 (b) when the criminal proceeding commenced, any complainant in relation to a charge for a sexual offence

was a child or a person with a cognitive impairment.

- 5 (2) Despite anything to the contrary in this Part, the Magistrates' Court must not grant leave to cross-examine any witness in a proceeding to which this section applies.

Examples

- 10 1 A proceeding relates to a sexual offence charge involving a child complainant and a sexual offence charge involving an adult complainant without a cognitive impairment. No cross-examination is permitted.
- 15 2 A proceeding relates to a charge for a sexual offence against an adult complainant without a cognitive impairment and a charge for a non-sexual offence against a child complainant. The section does not apply.
- 20 3 A proceeding relates to a charge for a sexual offence against a child complainant and a charge for a non-sexual offence against an adult complainant without a cognitive impairment. No cross-examination is permitted."

14 Committal case conference

25 In section 127(3) of the **Criminal Procedure Act 2009**, for "unless all parties to the committal case conference agree to the giving of the evidence." **substitute**—

"unless—

- 30 (c) all parties to the committal case conference agree to the giving of the evidence; or
- (d) the proceeding is a criminal proceeding for an offence alleged to have been committed during, or in connection with, the committal case conference."
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15 Order for accused to cross-examine witness before trial in certain sexual offence cases

5 In section 198A(2) of the **Criminal Procedure Act 2009**, for "other than a complainant" substitute ", other than a complainant who was a child or a person with a cognitive impairment when the criminal proceeding commenced,".

16 Application for leave

10 After section 344(b) of the **Criminal Procedure Act 2009** insert—

15 "(ba) in the case of a pre-trial cross-examination under an order made under section 198A or a limited preparatory cross-examination under an order made under section 198B, must be—

- 20 (i) filed with the County Court or the Supreme Court, as the case requires; and
- (ii) served on the DPP in accordance with section 392 at least 7 days before the cross-examination;".

Division 3—Transitional provision

17 New section 455 inserted

25 At the end of Chapter 10 of the **Criminal Procedure Act 2009** insert—

"455 Transitional provision—Justice Legislation Miscellaneous Amendments Act 2019

- 30 (1) Section 54 as amended by the **Justice Legislation Miscellaneous Amendments Act 2019** applies in respect of an offence alleged to have been committed on or after the day on which the amendment comes into

operation during, or in connection with, a summary case conference.

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- (2) Section 127 as amended by the **Justice Legislation Miscellaneous Amendments Act 2019** applies in respect of an offence alleged to have been committed on or after the day on which the amendment comes into operation during, or in connection with, a committal case conference.
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- (3) Item 4.6 of Schedule 2 as substituted by section 9 of the **Justice Legislation Miscellaneous Amendments Act 2019** applies to a criminal proceeding commenced on or after the commencement of section 9 of that Act, irrespective of when the offence is alleged to have been committed."
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Part 6—Amendment of other Acts

Division 1—Amendment of Evidence Act 2008

18 Courts and proceedings to which Act applies

5 For note 4 at the foot of section 4 of the **Evidence Act 2008 substitute—**

"4 Provisions in other Victorian Acts which relieve courts from the obligation to apply the rules of evidence in certain proceedings are preserved by section 8."

19 Postal articles

10 In section 160(1) of the **Evidence Act 2008**, for "fourth working day" **substitute** "seventh working day".

Division 2—Amendment of Evidence (Miscellaneous Provisions) Act 1958

20 Order to examine witnesses

(1) In section 4(1) of the **Evidence (Miscellaneous Provisions) Act 1958 omit** "or County Court".

(2) After section 4(1) of the **Evidence (Miscellaneous Provisions) Act 1958 insert—**

20 "(1A) The County Court, in its discretion and where it appears in the interests of justice to do so, on the application of a party to a civil or criminal proceeding before the County Court, may make, in relation to a person in
25 Victoria, an order for the issue of a commission for the examination of the person on oath or affirmation at any place in Victoria."

(3) In section 4(2), (4) and (6) of the **Evidence (Miscellaneous Provisions) Act 1958**, after "subsection (1)" **insert** "or (1A)".

5 (4) In section 4(3) of the **Evidence (Miscellaneous Provisions) Act 1958**—

(a) after "subsection (1)" **insert** ", or the County Court makes an order under subsection (1A),";

10 (b) **omit** "Supreme" (where secondly and thirdly occurring).

Division 3—Amendment of Oaths and Affirmations Act 2018

21 Offence to make false statutory declaration

15 At the foot of section 36 of the **Oaths and Affirmations Act 2018** **insert**—

"**Note**

20 The penalty applicable to this offence means the offence is an indictable offence—see section 112(1) of the **Sentencing Act 1991**. See also section 28 of the **Criminal Procedure Act 2009** regarding indictable offences that may be heard and determined summarily."

22 Offence to present false copy of a document for certification

25 At the foot of section 47 of the **Oaths and Affirmations Act 2018** **insert**—

"**Note**

30 The penalty applicable to this offence means the offence is an indictable offence—see section 112(1) of the **Sentencing Act 1991**. See also section 28 of the **Criminal Procedure Act 2009** regarding indictable offences that may be heard and determined summarily."

23 Offence to certify certain copies of documents

For the note at the foot of section 48 of the **Oaths and Affirmations Act 2018** substitute—

"Notes

- 5 1 See the definition of *original document* in section 3.
- 2 The penalty applicable to this offence means the offence is an indictable offence—see section 112(1) of the **Sentencing Act 1991**. See also section 28 of the **Criminal Procedure Act 2009** regarding indictable offences that may be heard and determined summarily."
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Division 4—Amendment of Professional Standards Act 2003

24 Delegation

- 15 In section 52A of the **Professional Standards Act 2003** omit "as an executive within the meaning of that Act,".

Division 5—Amendment of Sentencing Act 1991

25 Sentencing for a standard sentence offence

- 20 (1) In section 5B(1)(b) of the **Sentencing Act 1991**, for "summarily; or" substitute "summarily."
- (2) Section 5B(1)(c) of the **Sentencing Act 1991** is repealed.

26 Statute law revision

- 25 (1) In section 69FA(b) of the **Sentencing Act 1991**, after "section 15" insert "or 15E".
- (2) In section 165 of the **Sentencing Act 1991** (where secondly occurring), for "165" substitute "165A".
- 30 (3) In clause 1(1) of Schedule 3A to the **Sentencing Act 1991** omit "to a" (where secondly occurring).

Part 7—Repeal of this Act

27 Repeal of this Act

This Act is **repealed** on 1 December 2021.

Note

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

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.