

LEGISLATIVE COUNCIL

Read 1° 22 April 1986

(Brought in by the Honourable J. H. Kennan)

A BILL

to ratify, validate and approve certain Rules of the Supreme Court, to amend the *Supreme Court Act 1958* and for other purposes.

Supreme Court (Rules of Procedure) Act 1986

The Parliament of Victoria enacts as follows:

PART I—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to ratify, validate and approve the General Rules of Procedure in Civil Proceedings 1986 conditionally made by the Judges of the Supreme Court on 18 March 1986.

Commencement.

- 10 2. (1) Parts 1 and 2 come into operation on the 28th day after the day on which this Act receives the Royal Assent.
 (2) Part 3 comes into operation on the day on which the General Rules of Procedure in Civil Proceedings 1986 come into operation.

Principal Act.

3. In this Act, the *Supreme Court Act 1958* is called the Principal Act.

No. 6387.
Reprinted to No.
10167.
Subsequently
amended by Nos.
10252 and
10260.

PART 2—VALIDATION OF NEW COURT RULES

Validation of new Court Rules.

4. (1) The General Rules of Procedure in Civil Proceedings 1986 conditionally made by the Judges of the Supreme Court on 18 March 1986 are hereby ratified, validated and approved. 5

(2) The Rules referred to in sub-section (1) are for all purposes to be taken to be Rules of Court made by the Judges of the Supreme Court under the Principal Act.

Power to make Rules.

5. Section 25 of the Principal Act is amended as follows: 10

(a) After “for the time being in force in its various jurisdictions” insert “(whether ratified, validated and approved by the Parliament or not)”; and

(b) After paragraph (l) insert—

“(m) For making provision for or with respect to any matter dealt with in the General Rules of Procedure in Civil Proceedings 1986.”. 15

PART 3—AMENDMENTS CONSEQUENTIAL ON NEW COURT RULES

Amendment of the Principal Act. 20

6. The Principal Act is amended as follows:

(a) In section 3—

(i) for “3. In” substitute “3. (1) In”;

(ii) after the definition of “Pleading” insert—

“**Proceeding**” means any matter in the Court other than a criminal proceeding.; 25

(iii) after the definition of “Solicitor” insert—

“**Subordinate instrument**” has the same meaning as in the *Interpretation of Legislation Act 1984*.; 30

(iv) at the end of the section insert—

“(2) In this or any other Act or enactment or any subordinate instrument or other instrument a reference to a rule or decree of the Court is to be taken as a reference to an order of the Court.

(3) If by this or any other Act or enactment or by any subordinate instrument or other instrument a procedure is prescribed for or in relation to any proceeding in the Court or for or in relation to any step or process in such a proceeding and the General Rules of Procedure in Civil Proceedings 1986 prescribe a 35 40

procedure that is applicable to such a proceeding or step or process, the procedure prescribed by those Rules applies notwithstanding the provisions of that Act, enactment, subordinate instrument or other instrument.

5 (4) A proceeding to which the General Rules of Procedure in Civil Proceedings 1986 apply must, notwithstanding anything in any Act or enactment, be commenced and conducted in accordance with those Rules and not otherwise.

10 (5) A judgment or order in any proceeding must be enforced in accordance with the General Rules of Procedure in Civil Proceedings 1986 and not otherwise.

15 (6) In this or any other Act or enactment or any subordinate instrument or other instrument a reference to a writ of prohibition, mandamus, certiorari or *ne exeat colonia* by which the Court had before the commencement of Part 3 of the *Supreme Court (Rules of Procedure) Act 1986* jurisdiction to grant any relief or remedy is, subject to sub-section (7), to be taken as a reference to the judgment or order by which the Court may after that commencement grant that relief or remedy under this Act and the Rules.

20 (7) Sub-section (6) does not apply to a reference to a writ of habeas corpus.”;

25 (b) After section 3 insert—

Abolition of distinction between court and chambers.

‘3A. (1) The distinction between court and chambers is abolished and all business conducted by the Court is to be taken to be conducted in court.

30 (2) If by or under this or any other Act in force immediately before the commencement of Part 3 of the *Supreme Court (Rules of Procedure) Act 1986* any jurisdiction, power or authority is vested in a Judge of the Supreme Court—

35 (a) that jurisdiction, power or authority may be exercised in accordance with this Act and the Rules by the Court in all respects as that Judge might have done; and

40 (b) the Court constituted in accordance with this Act and the Rules has jurisdiction, power or authority co-ordinate with the jurisdiction, power or authority of the Judge.

45 (3) If by or under this or any other Act in force immediately before the commencement of Part 3 of the *Supreme Court (Rules of Procedure) Act 1986* any jurisdiction, power or authority is vested in the Court or in

any Judge by the use of the words “the Court”, “the Court or a Judge”, “the Supreme Court or any Judge thereof” or “a Judge of the Supreme Court” or by any words referring to the Court or to any Judge, that jurisdiction, power or authority may be exercised by the Court in accordance with this Act and the Rules. 5

(4) Sub-section (3) has effect notwithstanding that the Act vesting jurisdiction, power or authority in the Court or in any Judge designates the Court or Judge as the court, judge, arbitrator or person appointed to hear and determine any matter and notwithstanding that the determination is expressed to be final or without appeal, but if the determination is expressed to be final or without appeal an appeal does not lie from a determination of the Court.’; 10

(c) In section 203A (1) for paragraphs (a) and (b) substitute— 15
“(a) as security for costs;”.

