

Constitution (Court of Appeal) Act 1994

No. 109 of 1994

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Victoria

No. 109 of 1994

Constitution (Court of Appeal) Act 1994

[Assented to 20 December 1994]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to establish a Court of Appeal and a Trial Division in the Supreme Court of Victoria.

2. *Commencement*

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

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- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 9 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

PART 2—AMENDMENT OF CONSTITUTION ACT 1975

No. 8750.
Reprinted to
No. 70/1992
and
subsequently
amended by
Nos 18/1994,
43/1994 and
50/1994.

3. *Principal Act*

In this Part, the **Constitution Act 1975** is called the **Principal Act**.

4. *Amendment of section 5*

In section 5 of the Principal Act—

- (a) in the definition of “**Chief Justice**”, for “**puisne Judge**” **substitute** “**Judge of the Court**”;
- (b) for the definition of “**Master**” **substitute**—

“**Master**” means a Master of the Court referred to in section 75 (4);’.

5. *Amendment of section 75*

In section 75 of the Principal Act, for sub-sections (2) to (6), **substitute**—

- “(2) The Court consists of the Judges of the Court and the Masters of the Court.
- (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.

- (4) The Masters of the Court are—
- (a) the Senior Master;
 - (b) such number of Masters (other than Masters referred to in another paragraph) as are from time to time appointed;
 - (c) the Registrar of the Court of Appeal;
 - (d) the Listing Master;
 - (e) the Registrar of Criminal Appeals;
 - (f) the Taxing Master.”.

6. *New sections 75A and 75B inserted*

After section 75 of the Principal Act **insert—**

“75A. *Divisions of Court*

- (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.
- (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 a Master 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.

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75B. Qualification and appointment of Judges

- (1) Each of the Judges shall be or have been a practitioner of the Court of not less than 8 years' standing.
- (2) The Judges shall be appointed by the Governor with the advice of the Executive Council.”.

7. Amendment of section 77

- (1) After section 77 (3) of the Principal Act **insert—**
“(3A) Sub-section (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.”.
- (2) After section 77 (4) (c) of the Principal Act **insert—**
“or
(d) in the case of a judge to whom sub-section (3A) applies, upon the judge attaining the age of 72 years.”.

8. Amendment of section 78

In section 78 of the Principal Act, for “One of the Judges” **substitute** “The Chief Justice”.

9. New sections 78A and 78B inserted

After section 78 of the Principal Act, **insert—**

“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.

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—

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.”.

10. Amendment of section 79

In section 79 (1) and (2) of the Principal Act, omit “puisne”.

11. New section 79A inserted

After section 79 of the Principal Act insert—

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“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.
- (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.”.

12. *Reserve Judges*

- (1) After section 80A (2) (b) of the Principal Act **insert—**
“and
(c) service in the office of a Judge of the Court means service in the Court of Appeal or the Trial Division or in the Court as constituted before the commencement of section 12 of the **Constitution (Court of Appeal) Act 1994.**”;
- (2) In section 80A of the Principal Act—
 - (a) in sub-section (4), after “powers of a Judge” **insert “of the Court”;**
 - (b) in sub-section (5) (b), for “puisne judge” **substitute “Judge of the Court whose duties and powers the Judge is appointed to carry out.”.**

13. *New section 80B inserted*

After section 80A of the Principal Act **insert—**

“80B. Additional Judges of Appeal

- (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

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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.”.

14. Amendment of Principal Act

In section 81 of the Principal Act—

- (a) in sub-section (1), for “for the period during which such Judge of the Court is temporarily absent or on leave or unable to perform the duties of his office and for no longer” **substitute** “for such period, not exceeding 6 months, as is specified by the Governor in Council”;
- (b) in sub-section (3), **omit** “puisne”.

15. Salaries etc.

(1) After section 82 (1) of the Principal Act **insert**—

- “(1A) The President of the Court of Appeal shall be paid a salary at the rate of \$167 455 per annum or such higher rate as is for the time being applicable pursuant to an adjustment certified by the Attorney-General under sub-section (3) or (6).
- (1B) Each Judge of Appeal shall be paid a salary at the rate of \$162 334 per annum or such higher rate as is for the time being applicable pursuant to an adjustment certified by the Attorney-General under sub-section (3) or (6).”.

- (2) In section 82 (2) of the Principal Act, for “puisne judge” **substitute** “other Judge of the Court”.
- (3) In section 82 (3) (a) of the Principal Act, for sub-paragraph (ii) **substitute**—
 - “(ii) the amount by which the rate per annum of the salary of the President of the Court of Appeal is to be increased; and
 - (iii) the amount by which the rate per annum of the salary of each Judge of Appeal is to be increased; and
 - (iv) the amount by which the rate per annum of the salary of each other Judge of the Court is to be increased—”.
- (4) In section 82 of the Principal Act—
 - (a) in sub-sections (3), (5) and (6B), for “Chief Justice and the puisne judges” **substitute** “Chief Justice, the President of the Court of Appeal, the Judges of Appeal and the other Judges of the Court”;
 - (b) in sub-section (4) for “Chief Justice or each puisne judge” **substitute** “Chief Justice, the President of the Court of Appeal, each Judge of Appeal or each other Judge of the Court”;
 - (c) in sub-sections (4) and (6) (where twice occurring), for “Chief Justice and each puisne Judge” **substitute** “Chief Justice, the President of the Court of Appeal, each Judge of Appeal and each other Judge of the Court”;
 - (d) in sub-section (6A) for “Chief Justice and puisne judges” **substitute** “Chief Justice, the President of the Court of Appeal, each Judge of Appeal and each other Judge of the Court”.

16. Pensions

- (1) In section 83 of the Principal Act, for sub-section (2) **substitute**—

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“(2) Upon the death—

- (a) of any Judge of the Court; or
- (b) of any person who was formerly a Judge of the Court and entitled to a pension under sub-section (1)—

the spouse of the Judge or former Judge is entitled, until death or remarriage, 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.”.

(2) After section 83 (6) of the Principal Act insert—

- “(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 spouse of such a puisne judge, a reference to the annual salary for the time being payable under section 82 (2).”.

PART 3—AMENDMENT OF SUPREME COURT ACT 1986

17. Principal Act

In this Part, the **Supreme Court Act 1986** is called the Principal Act.

18. Definitions

In section 3 (1) of the Principal Act—

- (a) in the definition of “Chief Justice”, for “puisne Judge” substitute “Judge of the Court”;

- (b) after the definition of “Court” insert—
 “**Court of Appeal**” means the division of the Court called the Court of Appeal;’;
- (c) the definition of “Full Court” is **repealed**;
- (d) before the definition of “judgment” insert—
 “**Judge of Appeal**” means the Chief Justice, the President, another Judge of Appeal or an additional Judge of Appeal appointed or acting under section 80B of the **Constitution Act 1975**;’;
- (e) for the definition of “Master” **substitute**—
 “**Master**” means a Master of the Supreme Court referred to in section 75 (4) of the **Constitution Act 1975**;’;
- (f) after the definition of “plaintiff” insert—
 “**President**” means the President of the Court of Appeal;’;
- (g) after the definition of “the Rules” insert—
 “**Trial Division**” means the division of the Court called the Trial Division;’.

19. *Repeal of sections 8 and 9*

Sections 8 and 9 of the Principal Act are **repealed**.

20. *New Divisions 2 and 2A of Part 2 substituted*

For Division 2 of Part 2 of the Principal Act **substitute**—

“Division 2—Court of Appeal

10. *Jurisdiction and powers*

- (1) Subject to this Act, the Court of Appeal has jurisdiction to hear and determine—
 - (a) all appeals from the Trial Division constituted by a Judge;

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- (b) all applications for new trials;
 - (c) all appeals from the County Court constituted by a Judge;
 - (d) all appeals, applications, questions and other matters, whether civil or criminal, which, by or under an Act—
 - (i) immediately before the commencement of section 20 of the **Constitution (Court of Appeal) Act 1994**, were required or authorised to be heard or disposed of by the Full Court of the Supreme Court (including any such matter pending, but the hearing of which by the Full Court had not commenced, before that commencement); or
 - (ii) are referred to or reserved for the consideration of, or directed to be brought for argument before, the Court of Appeal.
- (2) The Court of Appeal has such additional jurisdiction as is conferred on it by or under this Act, another Act or a Commonwealth Act.
 - (3) The Court of Appeal may, in proceedings before it, exercise every jurisdiction or power of the Court.

11. *Way in which Court of Appeal may be constituted*

- (1) Subject to this Act, any 3 or more Judges of Appeal or if, the President of the Court of Appeal so determines in a particular case, 2 Judges of Appeal constitute, and

may exercise all the jurisdiction and powers of, the Court of Appeal.

- (2) More than one sittings of the Court of Appeal may be held at the same time.
- (3) When more than one sittings of the Court of Appeal are held at the same time, the jurisdiction and powers of the Court of Appeal may be exercised at each sittings.
- (4) The Rules may provide that the jurisdiction and powers of the Court of Appeal may, in particular kinds of applications or proceedings, be exercised by a single Judge of Appeal.
- (5) The Court of Appeal may discharge or vary a judgment given by a Judge of Appeal, or an order made or direction given by a Judge of Appeal.
- (6) Subject to sub-section (5), a judgment, order or direction given or made by a Judge of Appeal has effect as a judgment, order or direction of the Court of Appeal.

12. *Opinions equally divided*

- (1) If an appeal or other matter has been heard by the Court of Appeal constituted by 2 Judges of Appeal and the Judges differ in opinion, the appeal or other matter must be re-heard before the Court of Appeal constituted by more than 2 Judges.
- (2) If an appeal or other matter has been heard by the Court of Appeal constituted by more than 2 Judges of Appeal and the Judges are equally divided in opinion, the judgment of the Court must be given in accordance with the opinion of the senior Judge of Appeal then present.

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13. *Judges not to sit on appeal from their own judgments*

Except where otherwise expressly enacted, a Judge of Appeal must not sit on the hearing of an appeal from a judgment of the Trial Division constituted by that Judge or on the hearing of an application for a new trial of a proceeding tried before that Judge.

14. *Power of Court of Appeal on civil appeals*

- (1) The Court of Appeal, in hearing and determining an appeal in a proceeding in which there has been a trial by jury, may, despite any enactment or rule of law or practice to the contrary, give any judgment on the appeal that it might have given if the proceeding had been tried without a jury and the findings or verdict of the jury had been the findings of the Judge.
- (2) An order for a new trial of a proceeding, whether the proceeding has been tried with a jury or without a jury, may be limited to the question of damages only or to the question of liability only even if at the trial there was an apportionment under the **Wrongs Act 1958** or any other enactment.

15. *Constitution of Court if one Judge of Appeal unable to continue*

- (1) If—
 - (a) after the Court of Appeal (including the Court constituted under this section) has started the hearing, or further hearing, of a proceeding; and

(b) before the proceeding has been determined—

one of the Judges of Appeal constituting the Court of Appeal dies, resigns as a Judge or otherwise becomes unable to continue as a member of the Court for the purposes of the proceeding, the hearing and determination of the proceeding may be finished by the remaining Judges constituting the Court if at least 2 Judges remain and the parties consent.

- (2) The Court of Appeal constituted under this section may have regard to any evidence given or received, and arguments adduced, by or before the Court of Appeal as previously constituted.
- (3) Any question in the proceeding is to be decided in the same way, and the judgment of the Court of Appeal constituted under this section has the same force and effect, as if the Court were not constituted under this section.

16. *Arrangement of business of Court of Appeal*

The President is responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.

Division 2A—Trial Division

17. *Business to be disposed of by Trial Division constituted by a Judge*

- (1) The Trial Division constituted by a Judge may hear and determine all matters, whether civil or criminal, not required by or under this or any other Act or the Rules

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to be heard and determined by the Court of Appeal.

- (2) Unless otherwise expressly provided by this or any other Act, an appeal lies to the Court of Appeal from any determination of the Trial Division constituted by a Judge.

17A. *Restriction on appeals*

- (1) An order made by the Trial Division constituted by a Judge—
- (a) by consent of the parties; or
 - (b) as to costs which are in the discretion of the Trial Division—

is not subject to appeal to the Court of Appeal except by leave of the Court of Appeal or by leave of the Judge constituting the Trial Division which made the order.

- (2) An order made by the Trial Division constituted otherwise than by a Judge—
- (a) by consent of the parties; or
 - (b) as to costs which are in the discretion of the Trial Division—

is not subject to appeal to the Trial Division constituted by a Judge except by leave of the Trial Division constituted by a Judge or by leave of the person constituting the Trial Division which made the order.

- (3) Except as provided in Part VI of the **Crimes Act 1958**, an appeal does not lie from a determination of the Trial Division constituted by a Judge made on or in relation to the trial or proposed trial of a person on indictment or presentment.

- (4) An appeal does not lie to the Court of Appeal—
- (a) from an order allowing an extension of time for appealing from a judgment; or
 - (b) without the leave of the Judge constituting the Trial Division or of the Court of Appeal, from a judgment or order in an interlocutory application, being a judgment or order given by the Trial Division constituted by a Judge, except in the following cases—
 - (i) when the liberty of the subject or the custody of minors is concerned;
 - (ii) cases of granting or refusing an injunction or appointing a receiver;
 - (iii) a decision determining the claim of a creditor or the liability of a contributory or the liability of a director or other officer under the Corporations Law or the Companies (Victoria) Code in respect of misfeasance or otherwise;
 - (iv) a decision dismissing a proceeding for want of prosecution;
 - (v) such cases prescribed by the Rules as in the opinion of the Judges making the Rules are of the nature of final decisions.
- (5) An order refusing unconditional leave to defend a proceeding is to be taken not to be a judgment or order in an interlocutory application within the meaning of this section.

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- (6) An appeal does not lie to the Court of Appeal from an order giving unconditional leave to defend a proceeding.
- (7) An application for leave to appeal may be made without notice to any other party unless the Court of Appeal or the Judge constituting the Trial Division which gave the judgment otherwise directs.

17B. *Reference of matters to Court of Appeal*

- (1) Any case or question in a case which for any reason is deemed fit to be re-argued before decision or to be re-heard before final judgment, may be argued before the Court of Appeal, if the Trial Division so directs.
- (2) The Trial Division constituted by a Judge may, at the request of one of the parties but (unless the contrary is expressly enacted) not otherwise, reserve any proceeding or question in a proceeding for the consideration of the Court of Appeal, or direct any proceeding or question in a proceeding to be argued before the Court of Appeal.
- (3) If a case, question or proceeding is reserved for the consideration of the Court of Appeal, or is directed by the Trial Division to be argued before it the Court of Appeal and—
 - (a) the Court of Appeal gives leave, the case, proceeding or question may be considered by, or argued before, the Court of Appeal; or
 - (b) the Court of Appeal refuses leave, the case, proceeding or question

must be remitted to the Trial Division for determination by it.”.

21. *New section 20A inserted*

After section 20 of the Principal Act insert—

‘20A. *Power to act in cases relating to rates and taxes*

- (1) A Judge or officer of the Court is not incapable of acting in any proceeding by reason of being one of a class of ratepayers or one of any other class of persons liable in common with others to contribute to or be benefited by any rate or tax which may be affected by that proceeding.
- (2) In this section “rate or tax” means any rate, tax, duty or assessment, whether public, general or local and includes—
 - (a) any fund formed from the proceeds of any such rate, tax, duty or assessment; and
 - (b) any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such rate, tax, duty or assessment might be applied.’.

22. *Amendment of Principal Act*

(1) In the Principal Act—

(a) in section 25 (1) (c)—

- (i) for “to the Court” **substitute** “to the Trial Division of the Court”;
- (ii) for “from the Court” **substitute** “from the Trial Division”;

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(b) after section 25 (1) (c) **insert—**

“(ca) applications and appeals to and proceedings in the Court of Appeal;”;

(c) in section 104 (1) after “one or more Masters,” **insert** “a Registrar of the Court of Appeal,”;

(d) in section 104 (3) after “Senior Master, Master,” **insert** “Registrar of the Court of Appeal,”;

(e) in section 104 (4) after “Masters,” **insert** “Registrar of the Court of Appeal,”.

(2) After section 104 (5) of the Principal Act **insert—**

“(6) A person appointed under this section to the office of Registrar of the Court of Appeal or the office of Registrar of Criminal Appeals may, at the same or a later time, also be appointed to the other of the 2 offices and hold both offices concurrently.

(7) If the offices of Registrar of the Court of Appeal and Registrar of Criminal Appeals are held by the same person—

(a) the offices are deemed to be a single office under the title of Registrar of the Court of Appeal; and

(b) a reference in this or any other Act or in the Rules or any other instrument or document to the Registrar of Criminal Appeals is deemed to be a reference to the Registrar of the Court of Appeal.”.

(3) In section 105 (4) of the Principal Act, after “Senior Master, Master,” **insert** “Registrar of the Court of Appeal,”.

23. New section 111A inserted

After section 111 of the Principal Act **insert—**

"111A. Functions of Registrar of the Court of Appeal

The Registrar of the Court of Appeal is, subject to the general direction and control of the President, responsible for—

- (a) the preliminary examination of all applications and appeals made to the Court of Appeal, except as provided under section 112 (2);
- (b) taking such action as he or she is authorised or required by the President or the Rules to take to ensure the efficient and expeditious despatch of those applications and appeals to the Court of Appeal;
- (c) performing such other duties and exercising such other powers and authorities as are imposed or conferred on him or her by the President or the Rules."

24. Amendment of section 112

In section 112 of the Principal Act—

- (a) in sub-section (1), for paragraph (a) **substitute—**

"(a) preparing the lists of business in the Trial Division;"

- (b) in sub-section (2), for "Chief Justice" (wherever occurring) **substitute "Registrar of the Court of Appeal"**;
- (c) in sub-section (2) (a) and (b), for "Full Court" **substitute "Court of Appeal"**;
- (d) in sub-section (2) (c), for "Chief Justice" **substitute "Registrar of the Court of Appeal"**.

PART 4—AMENDMENT OF CRIMES ACT 1958

No. 6231.
 Reprinted to
 No. 49/1991
 and
 subsequently
 amended by
 Nos 65/1991,
 81/1991,
 13/1992,
 12/1993,
 19/1993,
 41/1993,
 60/1993,
 120/1993,
 129/1993 (as
 amended by
 No. 33/1994),
 23/1994 and
 43/1994.

25. *Crown cases reserved*

- (1) In section 446 of the **Crimes Act 1958**, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”.
- (2) In section 447 (1) of the **Crimes Act 1958**—
 - (a) for “to the Full Court; and the Full Court consisting of any three or five judges of the Supreme Court” **substitute** “to the Court of Appeal; and the Court of Appeal”;
 - (b) for “determination of the Full Court” **substitute** “determination of the Court of Appeal”;
 - (c) for “of the said Full Court” **substitute** “of the Court of Appeal”;
 - (d) for “that the Full Court” **substitute** “that the Court of Appeal”;
 - (e) for “the Full Court may make” **substitute** “the Court of Appeal may make”;
 - (f) for “Full Court shall be certified under the hand of the presiding Chief Justice or Senior of the said judges” **substitute** “Court of Appeal”;
 - (g) for “Prothonotary” **substitute** “Registrar of the Court of Appeal”.
- (3) In the **Crimes Act 1958**—
 - (a) in section 447 (3), for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;
 - (b) in sections 448, 449, 450 and 450A, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”.

26. *Crimes Act 1958*

In Part VI of the **Crimes Act 1958**—

- (a) in section 566, the definition of “Full Court” is **repealed**;

- (b) in section 567, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;
- (c) in section 567 (b), for “Supreme Court” **substitute** “Trial Division of the Supreme Court”;
- (d) in sections 567A, 568, 569, 570, 570A, 570B and 570C, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;
- (e) in section 570C (1), for “Supreme Court” **substitute** “Trial Division of the Supreme Court”.

27. *New section 571 substituted in Crimes Act 1958*

For section 571 of the **Crimes Act 1958** substitute—

“571. *Jurisdiction of Court of Appeal*

All jurisdiction and authority under this or any other Act in relation to questions of law arising in criminal trials are vested in the Court of Appeal.”.

28. *Further amendment of Part VI of Crimes Act 1958*

In the **Crimes Act 1958**—

- (a) in sections 572, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;
- (b) in section 573, for “Supreme Court” **substitute** “Trial Division of the Supreme Court”;
- (c) in section 574, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;
- (d) in section 574 (b), for “Supreme Court” **substitute** “Trial Division of the Supreme Court”;
- (e) in section 574, paragraph (f) is **repealed**;
- (f) in sections 576, 577, 578 and 579, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;

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- (g) in section 579 (5), for “Supreme Court” **substitute** “Trial Division of the Supreme Court”;
- (h) in sections 580, 581 and 582, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;
- (i) in section 582, for “the Supreme Court” (where twice occurring) **substitute** “a Judge of Appeal”;
- (j) in sections 582A, for “Full Court” (wherever occurring) **substitute** “Court of Appeal”;
- (k) in section 583, for “Full Court or the Supreme Court constituted by a judge” **substitute** “Court of Appeal or the Trial Division of the Supreme Court”;
- (l) in section 584 (a), for “Full Court” **substitute** “Court of Appeal”;
- (m) in section 584 (b), for “Supreme Court” **substitute** “Trial Division of the Supreme Court”.

PART 5—TRANSITIONAL

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.

30. References to Full Court

A reference in an Act or an instrument made under an Act or in any other document to the Full Court of the Supreme Court or to the Supreme Court sitting as the Full Court is to be taken to include a reference to the Court of Appeal.

PART 6—AMENDMENT OF OTHER ACTS

31. Interpretation of Legislation Act 1984

In section 38 of the **Interpretation of Legislation Act 1984**, after the definition of “County Court” insert—

No. 10096.
Reprinted to
No. 119/1993
and
subsequently
amended by
No. 18/1994.

“**Court of Appeal**” means the division of the Supreme Court called the Court of Appeal;’.

32. County Court Act 1958

(1) In section 74 (1) of the **County Court Act 1958**, for “Supreme Court” substitute “Court of Appeal”.

(2) In section 74 of the **County Court Act 1958**, for sub-section (2) substitute—

No. 6230.
Reprinted to
No. 43/1991
and
subsequently
amended by
Nos 18/1994
and 43/1994.

“(2) An appeal by a party referred to in sub-section (1)—

(a) unless paragraph (b) applies, must be brought by notice served within 14 days after the day of the judgment or order of the court on all parties to the proceedings;

(b) if the appeal is from a judgment or order refusing an application made without notice to a person, must be brought by notice filed in the Court of Appeal within 14 days after the judgment or order.

(2A) The Court of Appeal may extend the time within which an appeal may be brought, whether or not the time has expired and whether or not an application for extension of time has been made.

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- (2B) A notice of appeal—
- (a) must state whether the whole or part only and which part of the judgment or order the appellant is dissatisfied with; and
 - (b) must state specifically and concisely the grounds of complaint and the judgment or order sought in place of that from which the appeal is brought.
- (2C) A notice of appeal may be amended at any time as the Court of Appeal thinks fit.
- (2D) An appeal does not lie to the Court of Appeal from a judgment or order of the court in an interlocutory application, being a judgment or order made on or after the commencement of section 32 of the **Constitution (Court of Appeal) Act 1994**, except with the leave of the Court of Appeal.”.
- (3) In the **County Court Act 1958**—
- (a) in section 74 (3), for “Supreme Court” (where first and thirdly occurring) **substitute** “Court of Appeal”;
 - (b) in section 74 (3), for “reheard before the Supreme Court” **substitute** “reheard before the Trial Division of the Supreme Court”;
 - (c) in section 74 (5), for “Supreme Court to the Full Court” **substitute** “Trial Division of the Supreme Court to the Court of Appeal”;
 - (d) in section 76 (1), for “Full Court of the Supreme Court” **substitute** “Court of Appeal”;
 - (e) in section 76 (2), for “said Full Court of the Supreme Court” **substitute** “Court of Appeal”.

33. Magistrates’ Court Act 1989

In the Magistrates’ Court Act 1989—

- (a) in section 91 (2), for “Supreme Court, appeal to the Full Court of the Supreme Court” **substitute** “Court of Appeal, appeal to the Court of Appeal”;

- (b) in section 91 (4) for “Full Court of the Supreme Court” **substitute** “Court of Appeal”;
- (c) in section 91 (5), for “Full Court of the Supreme Court” **substitute** “Court of Appeal”.

34. Consequential amendment of other Acts

- (1) In section 52 (1) of the **Accident Compensation Act 1985**, for “Supreme Court sitting as a Full Court” **substitute** “Court of Appeal”.
- (2) In the **Administrative Appeals Tribunal Act 1984**—
 - (a) in section 52 (3), for “Supreme Court sitting as the Full Court” **substitute** “Court of Appeal”;
 - (b) in section 54 (1), for “Supreme Court sitting as the Full Court” **substitute** “Court of Appeal”.
- (3) In section 5 of the **Administrative Law Act 1978**—
 - (a) sub-section (1) is **repealed**;
 - (b) in sub-section (2), **omit** “either”;
 - (c) in sub-section (2), for paragraphs (a) and (b) **substitute** “on a date not more than 30 days after its pronouncement”.
- (4) In the **Attorney-General and Solicitor-General Act 1972**—
 - (a) in section 4 (3), for paragraph (a) **substitute**—
 - “(a) shall be paid such salary and allowances as are for the time being 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);”;
 - (b) in section 6—
 - (i) for “puisne judge” (where first occurring) **substitute** “judge of the Supreme Court (other than the Chief Justice, the President of the Court of Appeal or a Judge of Appeal)”;

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- (ii) for “*puisne judge*” (where secondly occurring) **substitute** “*such a judge*”.
- (5) In section 155 of the **Casino Control Act 1991**—
 - (a) in sub-section (3), for “*Supreme Court*” **substitute** “*Court of Appeal*”;
 - (b) sub-section (4) is **repealed**;
 - (c) in sub-section (6), for “*Supreme Court*” (where twice occurring) **substitute** “*Court of Appeal*”.
- (6) In the **Children and Young Persons Act 1989**—
 - (a) in section 199 (2), for “*leave of the Supreme Court, appeal to the Full Court of the Supreme Court*” **substitute** “*leave of the Court of Appeal, appeal to the Court of Appeal*”;
 - (b) in section 199 (4), for “*Full Court of the Supreme Court*” **substitute** “*Court of Appeal*”;
 - (c) in section 199 (5), for “*Full Court of the Supreme Court*” **substitute** “*Court of Appeal*”.
- (7) In section 145 of the **Employee Relations Act 1992**—
 - (a) in sub-section (1), for “*Full Court of the Supreme Court*” **substitute** “*Court of Appeal*”;
 - (b) in sub-sections (2) (3) and (4), for “*Full Court*” **substitute** “*Court of Appeal*”.
- (8) In section 19 (4) (b) of the **Judgment Debt Recovery Act 1984**, for “*Full Court of the Supreme Court*” **substitute** “*Court of Appeal*”.
- (9) In the **Legal Profession Practice Act 1958**—
 - (a) in section 14J—
 - (i) in sub-section (1), for “*Full Court of the Supreme Court*” **substitute** “*Court of Appeal*”;

- (ii) in sub-section (3), for “Supreme Court”
substitute “Court of Appeal”;
 - (b) in section 14k, for “Supreme Court” (wherever
occurring) **substitute** “Court of Appeal”;
 - (c) in section 14L, for “Supreme Court” (wherever
occurring) **substitute** “Court of Appeal”.
- (10) In section 38 (2) of the **Local Government Act 1989**, for “Full Court of the Supreme Court” (where
twice occurring) **substitute** “Court of Appeal”.
- (11) In section 26 of the **Market Court Act 1978**—
- (a) in sub-section (5), for “Supreme Court sittings
as the Full Court” **substitute** “Court of Appeal”;
 - (b) in sub-section (5), for “Supreme Court shall
make” **substitute** “Court of Appeal shall make”;
 - (c) in sub-section (5), for “Supreme Court may”
substitute “Court of Appeal may”;
 - (d) in sub-section (6), for “Supreme Court” (where
twice occurring) **substitute** “Court of Appeal”.
- (12) In the **Public Prosecutions Act 1994**—
- (a) in section 5 (1), for “puisne judge of the Supreme
Court under section 82” **substitute** “judge of the
Supreme Court under section 82 (2)”;
 - (b) in section 8 (1), for “puisne judge of the
Supreme Court” **substitute** “judge of the
Supreme Court (other than the Chief Justice, the
President of the Court of Appeal or a Judge of
Appeal)”.
- (13) In section 21 (2) of the **Sale of Land Act 1962**, for
“Full Court of the Supreme Court” **substitute** “Court
of Appeal”.
- (14) In the **Sentencing Act 1991**—
- (a) in section 5 (2E), after “Full Court” **insert** “or
Court of Appeal”;

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(b) in section 180, for "Full Court" (wherever occurring) **substitute** "Court of Appeal".

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 10 November 1994

Legislative Council: 8 December 1994

2. The long title for the Bill for this Act was "A Bill to relating to the Supreme Court of Victoria, to amend the **Constitution Act 1975**, the **Supreme Court Act 1986** and certain other Acts and for other purposes."

3. **Constitution Act 1975:**

Absolute majorities:

Legislative Assembly: 7 December 1994

Legislative Council: 13 December 1994

4. Section headings appear in bold italics and are not part of the Act.
 (See **Interpretation of Legislation Act 1984**.)