

**County Court Amendment (Koori Court) Act 2008**  
**No. 51 of 2008**

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Victoria

# County Court Amendment (Koori Court) Act 2008<sup>†</sup>

No. 51 of 2008

[Assented to 23 September 2008]

**The Parliament of Victoria enacts:**

## **1 Purpose**

The purpose of this Act is to amend the **County Court Act 1958**—

- (a) to establish a Koori Court Division of the County Court; and
- (b) to provide for the jurisdiction and procedure of that Division—

with the objective of ensuring greater participation of the Aboriginal community in the sentencing process of the County Court through the role to be

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played in that process by the Aboriginal elder or respected person and others.

## 2 Commencement

- (1) Subject to subsection (2), this Act (other than section 10) comes into operation on a day to be proclaimed.
- (2) If this Act (other than section 10) does not come into operation before 1 February 2009, it comes into operation on that day.
- (3) Sections 10(1) and (2) come into operation on the later of—
  - (a) the day on which item 39 of Schedule 1 to the **Relationships Act 2008** comes into operation; or
  - (b) the day on which section 6 comes into operation.
- (4) Section 10(3) comes into operation on the later of—
  - (a) the day on which section 44 of the **Courts Legislation Amendment (Associate Judges) Act 2008** comes into operation; or
  - (b) the day on which section 6 comes into operation.
- (5) Section 10(4) comes into operation on the later of—
  - (a) the day on which section 252 of the **Family Violence Protection Act 2008** comes into operation; or
  - (b) the day on which section 6 comes into operation.

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### 3 Principal Act

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

See:  
Act No. 6230.  
Reprint No. 12  
as at  
28 April 2006  
and  
amending  
Act Nos  
22/2006,  
50/2006,  
24/2007,  
26/2007,  
28/2007 and  
23/2008.  
LawToday:  
www.  
legislation.  
vic.gov.au

### 4 Definitions

In section 3(1) of the Principal Act **insert** the following definitions—

***"Aboriginal elder or respected person"*** means a person who holds office as an Aboriginal elder or respected person under section 22A;

***Aborigine*** means a person who—

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

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

***Koori Court Division*** means the division of the court established under section 4A;

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***Koori Court officer*** means a person who—

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

**5 New section 3AAB inserted**

Before section 3A of the Principal Act **insert—**

**"3AAB Meaning of family member for purposes of Koori Court Division**

- (1) In sections 4A and 4G, ***family member*** of a person means—
  - (a) the spouse or domestic partner of the person; or
  - (b) a person who has, or has had, an intimate personal relationship with the person; or
  - (c) a person who is, or has been, a relative of the person; or
  - (d) a child who normally or regularly resides with the person; or
  - (e) a child of whom the person is a guardian; or
  - (f) another person who is, or has been, ordinarily a member of the household of the person.
- (2) For the purposes of the definition of ***family member*** in subsection (1)—
  - (a) ***domestic partner*** of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or

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financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

- (i) for fee or reward; or
  - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);
- (b) **parent** of a child includes a guardian of the child or a person with whom the child normally or regularly resides;
- (c) **relative** of a person means—
- (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of the person; or
  - (ii) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of the person; or
  - (iii) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law of the person; or
  - (iv) an uncle, aunt, uncle-in-law or aunt-in-law of the person; or
  - (v) a nephew or niece of the person; or
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- (vi) a cousin of the person—  
and includes, in the case of domestic partners, a person who would be such a relative if the domestic partners were married to each other;
- (d) *spouse* of a person means a person to whom the person is, or was, married.
- (3) For the purposes of the definition of *domestic partner* in subsection (2)—
- (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case;
- (b) a person is not a domestic partner of another person only because they are co-tenants."

**6 New sections 4A to 4G inserted**

After section 4 of the Principal Act **insert**—

**"4A Establishment of Koori Court Division**

- (1) The court has a Koori Court Division.
- (2) The Koori Court Division has such of the powers of the court as are necessary to enable it to exercise its jurisdiction.
- (3) Despite anything to the contrary in this Act, the Koori Court Division may only sit and act at a place of the court specified by the Chief Judge by notice published in the Government Gazette.
- (4) The operation of section 3B is subject to this section.

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- (5) The Koori Court Division must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the **Sentencing Act 1991** and the proper consideration of the matters before the court permit.
- (6) The Koori Court Division must take steps to ensure that, so far as practicable, any proceeding before it is conducted in a way which it considers will make it comprehensible to—
- (a) the defendant; and
  - (b) a family member of the defendant; and
  - (c) any member of the Aboriginal community who is present in court.
- (7) Subject to this Act, the regulations and the rules, the Koori Court Division may regulate its own procedure.

#### **4B Jurisdiction of Koori Court Division**

The Koori Court Division has—

- (a) jurisdiction to deal with a proceeding for an offence given to it by section 4C; and
  - (b) jurisdiction to deal with a breach of a sentencing order made by it (including any offence constituted by such a breach) or variation of such a sentencing order; and
  - (c) jurisdiction to hear (in accordance with the rules) an appeal given to it by section 4D; and
  - (d) any other jurisdiction given to it by or under this or any other Act or the rules.
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**4C Dealing with proceedings for certain offences**

The Koori Court Division has jurisdiction to deal with a proceeding for an offence (other than an offence constituted by a breach of a sentencing order made by it) in the circumstances set out in section 4E.

**4D Hearing certain appeals**

- (1) The Koori Court Division has jurisdiction to hear an appeal under section 83 or 84 of the **Magistrates' Court Act 1989** in the circumstances set out in section 4E if the appeal is against a sentencing order made by—
  - (a) the Koori Court Division of the Magistrates' Court; or
  - (b) the Magistrates' Court other than the Koori Court Division of that court.
- (2) An appeal to the Koori Court Division under section 83 or 84 of the **Magistrates' Court Act 1989** must be conducted as a re-hearing and is limited to an appeal against a sentencing order.
- (3) Section 85 of the **Magistrates' Court Act 1989** does not apply to an appeal to the Koori Court Division.

**4E Circumstances in which Koori Court Division may deal with proceedings for certain offences or hear certain appeals**

For the purposes of sections 4C and 4D, the circumstances are—

- (a) the defendant is Aboriginal; and

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- (b) the offence is within the jurisdiction of the County Court, other than—
- (i) a sexual offence as defined in section 6B(1) of the **Sentencing Act 1991**; or
  - (ii) an offence against section 22 of the **Crimes (Family Violence) Act 1987** (breach of intervention order or interim intervention order) or an offence arising out of the same conduct as that out of which the offence against section 22 arose; and
- (c) the defendant pleads guilty to the offence; and
- (d) the defendant consents to the proceeding being dealt with by the Koori Court Division; and
- (e) the Koori Court Division considers that it is appropriate in all the circumstances that the proceeding be dealt with by it.

**4F Proceedings may be transferred to and from the Koori Court Division**

Subject to, and in accordance with the rules—

- (a) a proceeding may be transferred to the Koori Court Division, whether sitting at the same or a different venue; and
- (b) the Koori Court Division may transfer a proceeding (including a proceeding transferred to it under paragraph (a)) to the court, sitting other than as the Koori Court Division, at the same or a different venue.

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

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

**7 New Division 4A of Part I inserted**

After Division 4 of Part I of the Principal Act  
**insert—**

**"Division 4A—Aboriginal elders and respected persons**

**22A Appointment of Aboriginal elders or respected persons**

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

**8 Power to make rules of practice**

(1) After section 78(1)(he) of the Principal Act  
**insert—**

- "(hea) any matter relating to the practice and procedure of the Koori Court Division;  
(heb) the transfer of proceedings to and from the Koori Court Division;

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- (hec) the place at which an appeal under section 83 or 84 of the **Magistrates' Court Act 1989** may be heard by the Koori Court Division, being a place of the court in respect of which a notice has been published under section 4A; and
- (hed) the venues of the Magistrates' Court where sentencing orders were made against which an appeal may be heard by the Koori Court Division."
- (2) After section 78(5) of the Principal Act **insert**—
- "(6) Without limiting subsection (1), a power conferred by subsection (1)(hea) or (1)(heb) to make rules may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
  - (b) so as to make, in respect of the cases in relation to which it is exercised—
    - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
    - (ii) any such provision either unconditionally or subject to any specified condition.
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- (7) Without limiting subsection (1), rules made under subsection (1)(hea) or (1)(heb) may be made so as—
- (a) to require a matter affected by the rules to be approved by or to the satisfaction of a specified court official or a specified class of court official; and
  - (b) to confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
  - (c) to provide in a specified case or class of case for the exemption of proceedings or a class of proceeding from any of the provisions of the rules, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified."

**9 New section 93 inserted**

At the end of Part VIII of the Principal Act  
**insert—**

**"93 Transitional provision—County Court Amendment (Koori Court) Act 2008**

The amendments made to this Act by section 6 of the **County Court Amendment (Koori Court) Act 2008** apply to any proceeding, irrespective of when the offence to which the proceeding relates was committed or when the proceeding commenced, but does not apply to a proceeding in which the accused was arraigned before the commencement of that section."

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## 10 Consequential amendment of Principal Act

(1) For section 3AAB(2)(a) of the Principal Act  
**substitute—**

"(a) *domestic partner* of a person means—

- (i) a person who is in a registered relationship with the person; or
- (ii) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
  - (A) for fee or reward; or
  - (B) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);".

(2) For section 3AAB(3) of the Principal Act  
**substitute—**

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

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

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- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
- (c) a person is not a domestic partner of another person only because they are co-tenants."
- (3) In section 4A(4) of the Principal Act, for "section 3B" **insert** "sections 3B and 3BA".
- (4) For section 4E(b)(ii) of the Principal Act **substitute**—
- "(ii) a contravention of a family violence intervention order or a family violence safety notice under the **Family Violence Protection Act 2008** or an offence arising out of the same conduct as that from which the contravention arose; and".

## 11 Repeal of amending Act

This Act is **repealed** on 1 February 2010.

### Note

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**).

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## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly: 31 July 2008*

*Legislative Council: 21 August 2008*

The long title for the Bill for this Act was "A Bill for an Act to amend the **County Court Act 1958** to establish a Koori Court Division of the County Court, to provide for the jurisdiction and procedure of that Division and for other purposes."