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Quote:

About Victoria Police

Corporate Governance

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Chief Commissioner



Victoria Police is headed by Chief Commissioner Graham Ashton AM and is part of the broader Department of Justice and Regulation portfolio.

The Chief Commissioner of Police (CCP) reports directly to the Minister for Police, the Hon. Lisa Neville MP, and also works closely with the Minister for the Prevention of Family Violence (the Hon. Fiona Richardson MP) and the Minister for Roads and Road Safety (the Hon. Luke Donnellan MP).

Corporate governance

Victoria Police Executive Command is responsible for setting the strategic direction of Victoria Police, monitoring organisational performance, determining key priorities and risks and managing organisational capacity and capability.

Executive Command is comprised of the Chief Commissioner of Police, three Deputy Commissioners, two Executive Directors and the Chief Information Officer (CIO). Retired Air Chief Marshall Sir Angus Houston AK AC AFC is an independent member of Executive Command.

The Victoria Police Command group includes the Chief Commissioner, Deputy Commissioners, Executive Directors, Assistant Commissioners, Commanders, and all other Executive Officers.

The Corporate Advisory Group (CAG) provides strategic advice to Victoria Police leadership on a comprehensive program of organisational reform. The CAG is chaired by Sir Angus Houston.

For more information regarding corporate governance and the roles and membership of committees refer to the Victoria Police Annual Report 2015-16 (Appendix E).” [End Quote](#)

The [Police Integrity Act 2008](#) as per the definitions under Section 3 and Section 133 Part 8, **Quote: “Chief Commissioner** means the Chief Commissioner of Police under the Police Regulation Act 1958; **chief executive of a public authority means— (a) in relation to Victoria Police—the Chief Commissioner.”End Quote.**

the creation of the [Victoria Police Act 2013](#)

Quote: “Section 1 Purposes

The purposes of this Act are to—

(a) re-enact and modernise the law relating to the governance and regulation of Victoria Police; and

(b) retitle and substantially repeal the **Police Regulation Act 1958**.

PART 2—VICTORIA POLICE

Division 1—Constitution, role and functions Section 6: Victoria Police

The police force of Victoria is constituted by a body established by this section known as Victoria Police.

Note: Victoria Police is a special body under section 6(1) of the **Public Administration Act 2004**.

PART 3—VICTORIA POLICE PERSONNEL

Division 2—Chief Commissioner

Section 16: Role of Chief Commissioner

(1) **The Chief Commissioner— (a) is the chief constable and the chief executive officer of Victoria Police; and (b) subject to the direction of the Minister under section 10, is responsible for the management and control of Victoria Police.” End Quote.**

VICTORIA POLICE ACT 2013 (NO. 81 OF 2013) - SECT 50

Oath of office

(1) Before a police officer or [protective services officer](#) performs any duty or exercises any power as a police officer or [protective services officer](#), he or she must take an oath of office or make an affirmation of office and subscribe that oath or affirmation.

(2) The oath or affirmation must be—

(a) in Form 1 in Schedule 2 for a police officer; or

(b) in Form 2 in Schedule 2 for a [protective services officer](#).

- (3) The oath or affirmation is to be administered by— (a) a magistrate, in the case of the [Chief Commissioner](#) or a [Deputy Commissioner](#); or
- (b) a magistrate, the [Chief Commissioner](#) or a [Deputy Commissioner](#), in the case of an [Assistant Commissioner](#); or
- (c) a magistrate, the [Chief Commissioner](#), a [Deputy Commissioner](#) or an [Assistant Commissioner](#) in any other case.
- (4) If a person other than the [Chief Commissioner](#) administers the oath or affirmation, the person must forward the subscribed oath or affirmation to—
- (a) the Minister, in the case of the oath or affirmation of the [Chief Commissioner](#); or
- (b) the [Chief Commissioner](#), in any other case.

SCHEDULE 2
Sch. 2

Sections 50(2) and 192(2)

OATHS AND AFFIRMATIONS
FORM 1

OATH OR AFFIRMATION FOR POLICE OFFICERS

I [*insert name*] [*swear by Almighty God/do solemnly and sincerely affirm*] that I will well and truly serve our Sovereign Lady the Queen as a police officer in Victoria in any capacity in which I may be appointed, promoted, or reduced to, without favour or affection, malice or ill-will for the period of [*insert period*] from this date, and until I am legally discharged, that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences, and that while I continue to be a police officer I will to the best of my skill and knowledge discharge all the duties legally imposed on me faithfully and according to law.

FORM 2

OATH OR AFFIRMATION FOR [PROTECTIVE SERVICES OFFICERS](#)

I [*insert name*] [*swear by Almighty God/do solemnly and sincerely affirm*] that I will well and truly serve our Sovereign Lady the Queen as a [protective services officer](#) in Victoria, without favour or affection, malice or ill-will, that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences, and that while I continue to be a [protective services officer](#) I will to the best of my skill and knowledge discharge all the duties legally imposed on me faithfully and according to law.

FORM 3

Sch. 2

OATH OR AFFIRMATION FOR [SPECIAL CONSTABLES](#)

I [*insert name*] [*swear by Almighty God/do solemnly and sincerely affirm*] that I will well and truly serve our Sovereign Lady the Queen as a [special constable](#) in Victoria, without favour or affection, malice or ill-will, that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences, and that while I continue to be a [special constable](#) I will to the best of my skill and knowledge discharge all the duties legally imposed on me faithfully and according to law.

Division 2--Ancillary provisions for offences

- [259.](#) Definitions
- [260.](#) Criminal liability of officers of bodies corporate—accessorial liability
- [261.](#) Criminal liability of officers of bodies corporate—failure to exercise due diligence
- [262.](#) Conduct by officers, employees or agents

VICTORIA POLICE ACT 2013 (NO. 81 OF 2013) - SECT 259

Definitions

In this Division—

"body corporate" has the same meaning as corporation has in section 57A of the Corporations Act;

"officer" in relation to a [body corporate](#) means—

(a) a person who is an [officer](#) (as defined by section 9 of the Corporations Act) of the [body corporate](#); or

(b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the [body corporate](#).

The Police Badge outlining the Crown and what each part of the badge represents. It does not represent a Corporation or for the Chief Commissioner to act as a CEO.



Comment: As above is the current Victoria Police Badge and the description of the badge is displayed below. There on behalf of the Kings and Queens of England is a Police Officer's Oath and former contract to which the Victoria Parliament removed.

From the Police website and Wikipedia. Quote: **“The crown is the symbol of royal authority and the allegiance of members of the Victoria Police to our Sovereign. It shows that the organisation of Her Majesty, the Queen is controlled by the state of Victoria.”**

The circular title band has the words VICTORIA and POLICE. Both these words are highlighted in navy blue enamel in the band. **This tells people which police service the badge belongs to.**

The five-point star symbolises that Victoria Police Members will go in any direction to perform their duties.

The motto in navy blue, is ‘Uphold the right’ a fitting motto for any police service.

The centre piece of the badge represents the constellation of the Southern Cross. **The red enamel background of the navy-blue cross indicates the link/connection between Victoria Police members and the Queen/royalty.**

The laurel wreath symbolises bravery. Members of Victoria Police stand out as courageous people.” [End Quote](#)

A Police Officer’s Oath and Contract as per Imperial Acts [An Act for the Regulation of the Police Force](#) 8-01-1853 Section 10 [Quote](#): “No person appointed to be Chief Commissioner of Police, Provincial or other Inspector, Sub-Inspector, or other officer, Chief Constable, Sergeant, or Cadet, nor any Constable except Aboriginal natives, attached to the Police, shall be capable of holding the said Office or of acting in any way therein, until he shall take and subscribe or shall have taken and subscribed under the said recited Act, the following Oath, (that is to say), “I, A. B., do swear that I will well and truly serve our Sovereign Lady the Queen, in the office of Chief Commissioner of Police, Chief Inspector, Provincial Inspector, Sub-Inspector, Officer, Chief Constable, Sergeant, or Cadet or Constable without favour or affection, malice, or ill will, for the period of from this date, and until I’m legally discharged; that I will see and cause Her Majesty ‘s Peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the same, and that while I shall continue to hold the said Office, I will to the best of my skill and knowledge, discharge all the duties thereof faithfully accordingly to law. So help me God.” [End Quote](#)

Section 11. [Quote](#): “Every person taking and subscribing such oath, as aforesaid shall be deemed and taken to have thereby entered into a written agreement with, and shall be thereby bound to serve, Her said Majesty, as a member of the said Police Force, and in the capacity in which he shall have taken such oath, at the current rate of pay for such member, and until legally discharged, from the day on which such oath shall have been taken and subscribed: Provided, that no such agreement shall be set aside, cancelled, or annulled, for want of reciprocity: Provided further, that such agreement may be cancelled at any time by the lawful discharge, dismissal, or other removal from Office of any such person, or by the resignation of any such person being accepted by the Chief Commissioner of Police of the said Colony of Victoria, or other person acting in his stead.” [End Quote](#)

Under [Police Regulation Statute 1873](#) First Schedule, [Police Regulation Act 1890](#) Second Schedule and Confirmed by [Police Regulation Act 1958](#) – Second Schedule 3 the Oath of Allegiance: “ **I swear by Almighty God that I will well and truly serve our Sovereign Lady the Queen as a member of the Police Force of Victoria in such capacity as I may be hereafter appointed, promoted, or reduced to without favour or affection malice or ill-will for the period of from this date, and until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved; and that I will prevent to the best of my power all offences against the same, and that while I shall continue to be a member of the Police Force of Victoria I will to the best of my skill and knowledge discharge all the duties legally imposed upon me faithfully and according to law.**”

From the [Police Regulation Statute 1873](#) including the [Police Regulation Act 1890](#), a Police officer's contract with the Queen continued to the [Police Regulation Act 1958](#) within Section 13(3) which is the same as section 12 in the previous Acts this amended section regarding the Oath being an agreement to serve Her Majesty.

Section 12. “*Every person who has taken and subscribed such oath shall be taken to have, from the day on which such oath shall have been oath equivalent taken and subscribed, thereby entered into a written agreement with, and shall be thereby bound to serve Her Majesty as a member of the force, and in whatsoever capacity he may be hereinafter required to serve, and at the current rate of pay of any rank to which he may be appointed or reduced until legally discharged.*”

Common Law of England to be enforced. [An Act for the Regulation of the Police Force 8-01-1853](#) Section 4; [Police Regulation Statute 1873](#) Section 9 to the [Police Regulation Act 1928](#), under Section 10: **Quote:** “Every constable shall have such powers and privileges and be liable to all such duties as any constable duly appointed now has or hereafter may have earlier by **the common law** or **by virtue of any Act of Parliament now or hereafter to be in force in Victoria.**” **End Quote.**

[Police Regulation Act 1958](#)

Section 11. **Quote:** “Every constable shall have such powers and privileges and be liable to all such duties as any constable duly appointed now has or hereafter may have either by **the common law** or **by virtue of any Act of Parliament now or hereafter to be in force in Victoria**, and any member of the police force of higher rank than a constable shall have all the powers and privileges of a constable whether conferred by this Act or otherwise.” **End Quote.**

As per the Annotated Constitution for the Commonwealth of Australia Constitution Act by Dr. John Quick and Sir Robert Garran of 1901 also termed the **Quick and Garran has been confirmed within 166 High Court cases and 3 Privy Council UK cases**. As per pages 935 and 936 on Section 107 Commonwealth Constitution. **Quote:** “**Residuary Legislative Powers**. —The residuary authority left to the Parliament of each State, after the exclusive and concurrent grants to the Federal Parliament, embraces a large mass of constitutional, territorial, municipal, and social powers, including control over Corporations —other than foreign corporations and trading or financial corporations:
Courts —civil and criminal, maintenance and organization for the execution of the laws of a State:

Departments of State Governments — regulation of

Page 936: **Justice**—Courts:

Licenses— the regulation of the issue of licenses to conduct trade and industrial operations, within the State, such as liquor licenses and auctioneers' licenses. Subject however to sec. 92:

Officers—appointment and payment of public officers of the State:

Police - regulations, social and sanitary:” **End Quote**. (Relevant quotes from the pages outlining Section 107 (State Parliament Powers under the Commonwealth Constitution)

Hansard 21-9-1897 Constitution Convention Debates

The HON. E. BARTON (New South Wales) [8.36]:

Quote: “Persons who have taken the oath of allegiance to a foreign power are not to be classed in the same category as citizens of the country for the purpose of joining in legislation.

An HON. MEMBER: And not to be trusted?

The Hon. E. BARTON: Not to be trusted, *prima facie!* ” **End Quote**.

Hansard 3-3-1898 Constitution Convention Debates

Mr. SYMON.-There is no man in Australia who is more profoundly versed in constitutional law than Mr. Isaacs, and he knows that every point and every question has been the subject of more or less debate and discussion, and will be until the end of time.

Hansard 8-3-1898 Constitution Convention Debates

Mr. GLYNN.-I think they would, because it is fixed in the Constitution. There is no special court, but the general courts would undoubtedly protect the states. What Mr. Isaacs seeks to do is to prevent the question of *ultra vires* arising after a law has been passed.

[start page 2004]

Mr. ISAACS.-No. If it is *ultra vires* of the Constitution it would, of course, be invalid.

[Rundle v. Delaware & Raritan Canal Company - Justia US ...](https://supreme.justia.com/cases/federal/us/55/80/)

<https://supreme.justia.com/cases/federal/us/55/80/>

Rundle v. Delaware & Raritan Canal Company. 55 U.S. (14 How.) 80. Syllabus 1852. By the law of Pennsylvania, the River Delaware is a public navigable river, held ... This case presided by JUSTICE GRIER who confirmed that a Corporation cannot govern a subject of Her Majesty or citizen (Republic) in his order that: **Quote:** "1st. That by no sound or reasonable interpretation, can a corporation -- a mere faculty in law, be transformed into a citizen or treated as a citizen." **End Quote.**

As per page 777 Annotated Constitution for the Commonwealth by Quick and Garran 1901.

Quote: "Residence of Corporation.—In the United States, it was held in some early cases that a corporation aggregate was not, in its corporate capacity, a citizen, and that its right to sue in the federal courts depended on the citizenship of its members, which must be averred on the record. (Hope Ins. Co. v. Boardman, 5 Cranch 57 ; Bank of U. S. v. Deveaux, 5 Cranch 61.) These decisions were reviewed and overruled in Louisville R. Co. v. Letson, 2 How. 497, where it was held that a corporation created and doing business in a State is an inhabitant of the State, capable as being treated as a citizen for all purposes of jurisdiction. And the mischief of the earlier decision is now whittled away by a legal fiction ; the members of a corporation being conclusively presumed, for purposes of jurisdiction, to be citizens of the State in which the corporation was created. (Steamship Co. v. Tugman, 106 U.S. 118 ; Memphis, &c., R.R. Co. v. Alabama, 107 U.S. 581 ; Kent, Comm. i. 346.) **"It is well settled that a corporation created by a State is a citizen of the State, within the meaning of those provisions of the Constitution and statutes of the United States, which define the jurisdiction of the federal courts."** (Wisconsin v. Pelican Ins. Co. 127 U.S. p. 287.) **But such a corporation is not a citizen of the State, so as to be "entitled to all privileges and immunities of citizens in the several States."** (Blake v. McClung, 172 U.S. 239.)" **End Quote** Blake v McClung, 172 USSC 239 (12-12-1898).

As per bottom of page 961 Annotated Constitution for the Commonwealth by Quick and Garran 1901. (The States under Section 117 Commonwealth Constitution (Not to discriminate between one State).

Quote: "Corporations.—**It has been held in the United States that a corporation created by a State is not a "citizen" of the State, so as to be entitled to the privileges and immunities of citizens in the several States. (Paul v. Virginia, 8 Wall. 168 ; Blake v. McClung, 172 U.S. 239.) It would seem equally clear that a corporation cannot be a "subject of the Queen" within the meaning of this section.** Accordingly a State may discriminate between its own corporations and those of another State —subject of course to the limitations imposed by other sections of the Constitution. (Ducat v. Chicago, 10 Wall. 410.)" **End Quote**

As per Section 6 Application of the [Charter of Human Rights and Responsibilities Act 2006](#)

Quote: "6. Application

(1) Only persons have human rights. All persons have the human rights set out in Part 2.

Note: **Corporations do not have human rights.**" **End Quote**

[Munday v Gill \[1930\] HCA 20; \(1930\) 44 CLR 38 \(14 August 1930\)](#) Dixon. J:

Quote: “There is, however, a great distinction in history, in substance and in present practice between summary proceedings and trial upon indictment. Proceedings upon indictment, presentment, or *ex officio* information are pleas of the Crown. A prosecution for an offence punishable summarily is a proceeding between subject and subject. The former are solemnly determined according to a procedure considered appropriate to the highest crimes by which the State may be affected and the gravest liabilities to which a subject may be exposed. **The latter are disposed of in a manner adopted by the Legislature as expedient for the efficient enforcement of certain statutory regulations with respect to the maintenance of the quiet and good order of society.**” [End Quote](#)

As confirmed by Stephen. J within [Watson v Lee \[1979\] HCA 53; \(1979\) 144 CLR 374 \(23 October 1979\)](#) at paragraph 23 **Quote:** “ As Scott L.J. said in *Blackpool Corporation v. Locker* (1948) 1 KB 349, at p 361 , speaking there of sub-delegated legislation, "there is one quite general question . . . of supreme importance to the continuance of the rule of law under the British constitution, **namely, the right of the public affected to know what that law is**". **The maxim that ignorance of the law is no excuse forms the "working hypothesis on which the rule of law rests in British democracy"** but to operate it requires that "the whole of our law, written or unwritten, is accessible to the public - in the sense, of course, that at any rate its legal advisers have access to it at any moment, as of right". It was, his Lordship said (1948) 1 KB, AT p 370 , "vital to the whole English theory of the liberty of the subject, that the affected person should be able at any time to ascertain what legislation affecting his rights has been passed". (at p395).” [End Quote](#)

[R v Smithers \[1912\] HCA 96; \(1912\) 16 CLR 99 \(20 December 1912\)](#) Isaacs. J

Quote “The learned Attorney-General of New South Wales spoke of the police power being still preserved in its entirety for the preservation of the health, morals and safety of the people, and he pointed to [sec. 107](#). **But the simple answer is that the powers of State Parliaments referred to in that section cannot be larger than they have under the State Constitutions; and by [sec. 106](#) those Constitutions are confirmed but "subject to this Constitution," and, further, [sec. 107](#) itself while confirming the powers of State Parliaments does so with two exceptions, one of which is as to powers "withdrawn from the Parliament of a State."** So that **applying the first case mentioned in Lord Loreburn's canon, "the text being explicit is conclusive."** **Whatever then is found to be the fair meaning of anything elsewhere enacted, is by virtue of the clear enactments of secs. 106 and 107 so much qualification of the State [Constitution](#) and State parliamentary powers.** I can, consequently, not find in those sections any suggestion of a line of demarcation.

But the contrary is shown in both the cases I have referred to at the places cited. And in *Keller v. United States* [14] the Court makes some quotations from previous cases which are exactly in line with the canons of construction laid down by the Privy Council. One is:— "Generally it may be said in respect to laws of this character that, though resting upon the police power of the State, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject matter, for that power, like all the other reserved powers of the States, is subordinate to those in terms conferred by the [Constitution](#) upon the nation." Another is:— "Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the general government, or rights granted or secured by the supreme law of the land." End Quote

[Ridgeway v R \[1995\] HCA 66; \(1995\) 129 ALR 41; \(1995\) 69 ALJR 484; \(1995\) 184 CLR 19 \(19 April 1995\)](#) McHugh: Paragraph 7. Quote: "Nor is the position any different when the accused has been induced to commit an offence by the conduct of law enforcement officials. **Law enforcement officials are not exempted from the operation of the criminal law. If their acts or omissions induce a person to commit a crime, they are liable to be punished as principals or accessories.** It is no answer that they acted with the best of motives. In *A. v. Hayden (No.2)* (200), Gibbs CJ said that it "is fundamental to our legal system **that the executive has no power to authorize a breach of the law**". When a law enforcement official induces a person commit a crime, both are in breach of the criminal law and are liable to be punished accordingly. " End Quote

[Mobil Oil Australia Pty Ltd v Victoria \[2002\] HCA 27; 211 CLR 1; 189 ALR 161; 76 ALJR 926 \(26 June 2002\)](#) KIRBY J. Paragraph 69 Quote: The decision of this Court in *Re Wakim; Ex parte McNally* [81] contradicts the proposition that the **conferral by statute of jurisdiction and power on a superior court is immune from the restrictions of the Constitution. Any deployment of public power in Australia must conform to the Constitution. This applies to a purported conferral of jurisdiction and power upon a State court as well as on a federal court, as considered in Wakim.** " End Quote

[Bropho v Western Australia \[1990\] HCA 24; \(1990\) 171 CLR 1 \(20 June 1990\)](#) Mason C.J, Deane, Dawson, Toohey, Gaudron and McHugh JJ, but within *Jacobsen v Rogers* other than McHugh, the Justices quote themselves within Bropho. [Jacobsen v Rogers \[1995\] HCA 6; \(1995\) 182 CLR 572; \(1995\) 69 ALJR 131; \(1995\) 37 ALD 321; \(1995\) 76 A Crim R 400 \(17 February 1995\)](#) Mason C.J, Deane, Dawson, Toohey and Gaudron JJ

Quote: “13. It is, we think, important to recognize that the Crown, being relevantly the executive branch of government, carries out in modern times multifarious functions involving the use and occupation of many premises and the possession of many things. **It carries out those functions through servants and agents who, notwithstanding that they act with the authority of the Crown, have no immunity from the ordinary criminal law (15 See Bropho v. Western Australia (1990) 171 CLR at 21, 26; A. v. Hayden [1984] HCA 67; (1984) 156 CLR 532 at 580-582).** The Crown itself may not be subjected to criminal liability, save in the most exceptional circumstances (16 See *Cain v. Doyle* [1946] HCA 38; (1946) 72 CLR 409 at 424). (Most relevant Part only) ” End Quote

[Shaddock & Associates Pty Ltd v Parramatta City Council \(No 1\) \[1981\] HCA 59; \(1981\) 150 CLR 225 \(28 October 1981\)](#) The Justices found Parramatta City Council were negligent with their information to Shaddock & Associates legal representative. Road widening case where the council commenced the road widening after informing Shaddocks to the contrary. So as Police are a Corporation or even acting under the Crown performing outside their duty and claiming that it is lawful such as issuing a fine, is an aspect of alleged Treason and Fraud.

[Plenty v Dillon \[1991\] HCA 5; \(1991\) 171 CLR 635 \(7 March 1991\)](#) Trespass case against S.A Police to Mr Plenty’s property in order to serve a charge on his daughter who was not present. Police or Sheriff officers who exceed their duty cannot claim immunity as stipulated within Bropho and *Jacobsen v Rogers* above.

[Trobridge v Hardy \[1955\] HCA 68; \(1955\) 94 CLR 147 \(7 December 1955\)](#) The High Court Justices were concerned by the actions of the two WA police officers who arrested Trobridge who was suspected of malice in attempting to procure a taxi fare. Mr Trobridge co-operated with police and was arrested for the alleged offence and failing to state his name and address after handing the officers his business card. Mr Trobridge was put into a holding cell on a single alleged minor offence and interviewed. Unknown if charges resulted or if Trobridge sought a remedy through Tort law for his unlawful arrest and detention.

[Cook against Leonard and Another \[1827\] EngR 40; \(1827\) 6 B & C 351; 108 E.R. 481 \(1 January 1827\)](#). Defendant's Leonard & Anor won against Police Constable Cook. A few foreigners were had performing animals within the street and the animals were obstructing the street to which may amount as the Common Law (UK) of Nuisance. The dromedary (Arabian Camels) were removed from the street into a stable. Police Constable Cook prevented the defendant from removing the Camels from the Stable. Thus under the Act for Paving and Lighting the Town of Stroud, the defendants did not breach the Act nor of nuisance and Cook was found to be acting Color Offici (Colour of Office) outside his duty by refusing the defendant/s to remove the camels from the town of Stroud.



The dromedary, also called the Arabian camel, is a large, even-toed ungulate with one hump on its back. The dromedary is the smallest of the three species of camel; adult males stand 1.8–2 m at the shoulder, while females are 1.7–1.9 m tall. [Wikipedia](#) **Scientific name:** *Camelus dromedarius*

As per The Age article “State denies duty of care to injured police” dated July 5, 2014.

Relevant parts only.

First paragraph: **Quote:** “The state government and Victoria Police are using an arcane legal technicality to block seriously injured police officers from suing the force for compensation, claiming they owe no duty of care to members hurt in the line of duty.” **End Quote.**

Third paragraph: **Quote:** “In a bid to avoid a payout, the government is claiming the police officers are not technically employees of the State [but “public officers” conducting “independent duties”, absolving the government of civil liability for their injuries.” **End Quote.**

Fifth and Sixth paragraphs: **Quote:** “The government’s argument is based on an interpretation of the wording of a police oath written more than 56 years ago which sees Victorian officers sworn into service of “our Sovereign Lady the Queen”.

[The government] denies that [Mr Boyer] was employed by [the government] and says further that at all material times [Mr Boyer] was executing independent duties cast upon him by reason of his oath taken under the Police Regulation Act 1958.” The defence filed in the Supreme Court say. “[The government] denies that it owed a duty of care to [Mr Boyer].” **End Quote.**

Eighth to Tenth paragraphs: **Quote:** “A source said the government has used the defence in the past in a bid to block civil claims despite police officers being apparently recognised as employees in some industrial relations legislation and by WorkSafe.

But Giuseppe Carabetta, senior lecturer at the University of Sydney Business School, said the government’s defence could be difficult to refute because police have long been recognised in law as “office holders” rather than employees.

‘Essentially the Crown is denying that the plaintiff is an employee in the strict common law sense. As the law current stands, the Crown will, in my view succeed,’ he said.” **End Quote.**

[Enever v R \[1906\] HCA 3; \(1906\) 3 CLR 969 \(12 March 1906\)](#) concerns the actions of a wrongful arrest by Tasmanian Police officer

Griffiths. C.J **Quote:** “The constable was, therefore, personally liable for his wrongful act; but the question is whether under the terms of the *Crown Redress Act* the Government are responsible for it. It is not contended by the appellant that the Statute imposes any liability upon the Government except in cases where the relationship between the officer and the Government is such that, if a like relationship existed between subject and subject, the maxim *respondeat superior* would apply. It is necessary, therefore, to consider the nature of the office of a constable, and what, according to the law of Tasmania, is the nature of the relationship between a constable and the Executive Government by whom he is appointed.

At common law the office of constable or peace officer was regarded as a public office, and the holder of it as being, in some sense, a servant of the Crown” **End Quote**

Barton. J: **Quote:** “In *Sadler v. Henlock*^[7]—to look at the matter as between subject and subject—the question was whether, between the defendant and a person employed by him, who, by his method of doing certain work for the defendant, committed a tortious act, there existed the relation of master and servant, or that of contractor and contractee, and it was held that the former was the real relation, and that the defendant was liable. Had the person employed for the purpose been a contractee "exercising an independent employment" the action would not have lain, because the test was whether the defendant retained the power of controlling the work. ” **End Quote** [7] [1855] EngR 106; 4 E. & B., 570.

Barton closing argument to which Griffiths C.J and O’Connor agree **Quote:** “the Government is not liable for the tort complained of in this case either on the ground that, on the occasion in question, and within the scope of the duties he was performing, the constable was acting as a servant of the Crown, or on the ground that this was an occasion on which an action would lie between subject and subject. On both those grounds I am equally clear, and I need not add to what the learned Chief Justice has so clearly and exhaustively said in relation to the question depending on the construction of the words in sec. 4 of the *Crown Redress Act 1891*, because, having regard to the history of the institution and administration of the police and their regulation by Statute, the circumstances and the reasons of the administration sections are so wholly different from anything that could exist in relation to the adjustment of civil rights as between subject and subject, that it is impossible to suppose that the words of sec. 4 apply so as to render the Crown liable for the tortious act of a constable in the mistaken belief that he is performing a statutory duty. I agree that the appeal fails.” **End Quote**

Enever was confirmed within [Horvath & Ors v State of Victoria & Ors \[2004\] HCATrans 215 \(18 June 2004\)](#) application with Hayne and Heydon JJ would not overrule and cannot overrule there must be a minimum of 3 Justices, but all 7 as the full bench to overrule would be prudent. Enever v R 1906 on police officers exceeding their duty are liable personally. [Attorney-General \(NSW\) v Perpetual Trustee Co \(Ltd\) \[1952\] HCA 2; \(1952\) 85 CLR 237 \(3 March 1952\)](#) Police injury case, but Enever v R 1906 case is cited in this case but it does not have relevance due to injury and not exceeding their duty.

These cases are Stare Decisis cases on Judges, Magistrates, Judicial Registrars and Governors. [James Aspinall Tobin, who has Survived Thomas Tobin v The Queen \[1864\] EngR 21; \(1864\) 16 CB NS 310; 143 E.R. 1148 \(1 January 1864\)](#) top of page 1156 by the court. **Quote:** “**Judges and governors have been held responsible for wrongs done to a subject, even though the act has had the approval of the Crown or the government : see *Mostyn v Fabrigas, Cowp. 161; Sutherland v Murray 1 T. R 538, n; Sutton v Johnstone, 1 T.R. 493.***” In the last mentioned case, **Eyre C.B.**, in answer to an objection that the plaintiff’s complaint, - that the defendant neglected and committed to hold a court-martial upon him within a reasonable time, - was *damnum sine injuria*, says: **Every breach of a public duty, working wrong and lost to another, is an injury, and actionable, “ – that is, against the party doing the wrong.”** **End Quote.**

[Mostyn versus Fabrigas \[1774\] EngR 104; \(1774\) 1 Cowp 161; 98 E.R. 1021 \(14 November 1774\)](#) and the last mentioned case is contained online, but not *Sutherland v Murray*. [Sutton against Johnstone \[1786\] EngR 18; \(1786\) 1 TR 493; 99 E.R. 1215 \(B\) \(1 January 1786\)](#)

High Court cases and applications confirms *Tobin v The Queen* [1864] Fifteen times pertaining to the Crown (Monarch or lawful Act by the Governor General or Governor on behalf), but the public officers are liable for exceeding their duty. [Attorney-General \(NSW\) v Perpetual Trustee Co \(Ltd\) \[1952\] HCA 2; \(1952\) 85 CLR 237 \(3 March 1952\)](#) Dixon. J at paragraph 19. [Field v Nott \[1939\] HCA 41; \(1939\) 62 CLR 660 \(20 December 1939\)](#) Latham. CJ, Starke and Dixon. JJ. [Strachan v Commonwealth \[1906\] HCA 48; \(1906\) 4 CLR 455 \(14 August 1906\)](#) Application heard by Griffith C.J and O'Connor. J; [Little v Commonwealth \[1947\] HCA 24; \(1947\) 75 CLR 94 \(11 July 1947\)](#) Application heard by Dixon. J; [Commonwealth v Miller \[1910\] HCA 46; \(1910\) 10 CLR 742 \(12 September 1910\)](#) Higgins. J; [Baume v Commonwealth \[1906\] HCA 92; \(1906\) 4 CLR 97 \(27 August 1906\)](#) The Court – Griffith. C.J, Barton who agreed with C.J and O'Connor.

[Ramsay v Larsen \[1964\] HCA 40; \(1964\) 111 CLR 16 \(29 July 1964\)](#) Kitto and Taylor. JJ confirms *Tobin* and also *Enever*.

[Enever v R \[1906\] HCA 3; \(1906\) 3 CLR 969 \(12 March 1906\)](#) Griffith. C.J and O'Connor. J to which all these previous cases confirm *Enever* of a police officer false arrest. Namely a public officer exceeds their duty is liable to which [Horvath & Ors v State of Victoria & Ors \[2004\] HCATrans 215 \(18 June 2004\)](#) Hayne and Heydon. JJ in this Application stated they would not overrule the *Enever* case.

[Commonwealth v Quince \[1944\] HCA 1; \(1944\) 68 CLR 227 \(25 February 1944\)](#) Latham. C.J confirms *Enever* and Griffith CJ in *Baume*. Rich and Williams.JJ confirm *Tobin v The Queen* 1863-4.

Further High Court cases confirming the case of James Aspinall Tobin, who has Survived *Thomas Tobin v The Queen* [1864] EngR 21; (1864) 16 CB NS 310; 143 E.R. 1148 (1 January 1864).

Namely: [Shaw Savill & Albion Co Ltd v Commonwealth \[1940\] HCA 40; \(1940\) 66 CLR 344 \(5 December 1940\)](#) Starke. J.

[R v Dalgety & Co Ltd Suppliant \[1944\] HCA 2; \(1944\) 69 CLR 18 \(2 March 1944\)](#) Latham. C.J and Starke. J

[Cain v Doyle \[1946\] HCA 38; \(1946\) 72 CLR 409 \(16 October 1946\)](#) Latham C.J & Dixon. J.

[Downs v Williams \[1971\] HCA 45; \(1971\) 126 CLR 61 \(11 October 1971\)](#) by Windeyer and Gibbs. J.

[Oceanic Crest Shipping Co v Pilbara Harbour Services Pty Ltd \[1986\] HCA 34; \(1986\) 160 CLR 626 \(26 June 1986\)](#) Gibbs. C.J at 6 confirms *Tobin* and at 9 like Brennan. J at 21 and Dawson. J at 6 confirms *Enever*. And [Mabo v Queensland \(No 2\) \("Mabo case"\) \[1992\] HCA 23; \(1992\) 175 CLR 1 \(3 June 1992\)](#) Deane and Gaudron at 29 confirm *Tobin*. Toohey. J at 113 confirms *Mostyn versus Fabrigas* [1774]

There are 5 High Court cases confirming [Mostyn versus Fabrigas \[1774\] EngR 104; \(1774\) 1 Cowp 161; 98 E.R. 1021 \(14 November 1774\)](#).

Namely: [Anderson v Eric Anderson Radio & Tv Pty Ltd \[1965\] HCA 61; \(1965\) 114 CLR 20 \(1 December 1965\)](#) Windeyer. J first paragraph. [Breavington v Godleman \[1988\] HCA 40; \(1988\) 169 CLR 41 \(18 August 1988\)](#) Toohey. J at 20.

[Commonwealth v Yarmirr \[2001\] HCA 56; 184 AJR 113; 208 CLR 1; 75 ALJR 1582 \(11 October 2001\)](#) McHugh. J at 188 and 203.

[Regie National des Usines Renault SA v Zhang \[2002\] HCA 10; 210 CLR 491; 187 ALR 1; 76 ALJR 551 \(14 March 2002\)](#) Gleeson. CJ, Gaudron, McHugh, Gummow and Hayne. JJ at par 70.

INTERNATIONAL MILITARY TRIBUNAL (NUREMBERG) Judgment of the court: 1 October 1946 Bottom of page 100: Quote “Many of these men have made a mockery of the soldier’s oath of obedience to military orders. When it suits their defence they say they had to obey; when confronted with Hitler’s brutal crimes, which are shown to have been within their general knowledge, they say they disobeyed. **The truth is they actively participated in all these crimes, or sat silent and acquiescent, witnessing the commission of crimes on a scale larger and more shocking than the world has ever had the misfortune to know. This must be said: Where the facts warrant it, these men should be brought to trial so that those among them who are guilty of these crimes should not escape punishment.**”End Quote.

Bouvier’s Legal Maxims 1856: A communi observantia non est recedendum. **There should be no departure from common observance or usage.** Co. Litt. 186.

A verbis legis non est recedendum. **From the words of the law there must be no departure.** Broom’s Max. 268; 5 Rep. 119; Wing. Max. 25.

[Lopez v City of Brighton \[1982\] VicRp 35; \[1982\] VR 369 \(2 September 1977\)](#) An interlocutory injunction case between plaintiffs as ratepayers and councillors and Mrs. Lopez as the Mayoress of City of Brighton and the defendants is the corporation of the City of Brighton. Halfway down to bottom of page 7, top and half way down page 8 AustLii PDF version. **Fullagar, J Quote:** “On the question of locus standi, Lord Denning held that the male plaintiff had a sufficient interest because "Mr. Blackburn is a citizen of London. His wife is a ratepayer. He has children who may be harmed by the exhibition of pornographic films". His Lordship held that there was a high constitutional principle, stated by himself in McWhirter's Case [\[1973\] 1 All ER 689](#), and re-stated in slightly different terms as follows in Blackburn's Case at [\[1976\] 3 All ER p. 192](#); [\[1976\] 1 WLR p. 559](#): "I regard it as a matter of high constitutional principle that if there is good ground for supposing that a Government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any of those offended or injured can draw it to the attention of the Courts of law and seek to have the law enforced, and the Courts in their discretion can grant whatever remedy is appropriate."

Continued Quote: “Stephenson, LJ held there was locus standi in the plaintiffs in one sentence: "They live in the Council's jurisdiction and have locus standi, Mrs. Blackburn is a ratepayer." Bridge, LJ said: "I agree that Mrs. Blackburn has sufficient locus standi, as a ratepayer." McWhirter's Case itself is not directly in point on the question of locus standi. In that case, as in Blackburn's Case, not one of the long line of decisions from which I have selected six as decisive of the present case was either cited to the Court of Appeal or referred to by any of its members. It has been indicated in the High Court of Australia that, as a general rule, a single judge of a State Supreme Court should follow the English Court of Appeal upon a point of law clearly decided by it which is not the subject of a decision by the State Full Court or the High Court of Australia. The present case is, in my opinion, an exception which proves the general rule. In the first place the "**high constitutional principle**" asserted by the Court of Appeal in Blackburn's Case has no fixed content and leaves it to the individual judge to decide upon no fixed legal rules or criteria, **whether the illegal activity is carried out in a way which "offends or injures thousands of Her Majesty's subjects"**”.

Continued Quote half way down page 8: “I reiterate that the judgment in the Queensland case above referred to of Bradford v Municipality of Brisbane (1901) 11 QLJ 44 was delivered by Sir Samuel Griffith who became Chief Justice of the High Court of Australia. Finally, Mr. Merralls for the defendant corporation referred me to the very recent decision of the **House of Lords in Post Office Engineering Union v Gouriet**, so far reported only in the "Times" newspaper of 27 July 1977, and the House of Lords in that case delivered a decision which in my opinion involves a rejection and overruling of the alleged high constitutional principle which had been asserted by the Court of Appeal. In the course of a speech trenchantly critical of the approach of the Court of Appeal in **Gouriet's Case** itself, **Lord Wilberforce is reported to have said: "That it is the exclusive right of the Attorney-General to represent the public interest ... is not technical, nor procedural, nor fictional. It is constitutional. It is also wise."** (See now [\[1977\] UKHL 5](#); [\[1978\] AC 435](#), at p. 481).” **End Quote**

[R v Barger \[1908\] HCA 43; \(1908\) 6 CLR 41 \(26 June 1908\)](#)

Excise Duty as a tax etc.

Griffiths C.J, Barton and O'Connor JJ.

Bottom of page 2: "The question for decision is entirely one of construction. Whether it is in the best interests of the Commonwealth that the Federal Parliament should have the powers contended for, or whether those interests would be best furthered by the exercise of the powers reserved to the States, are matters with which this Court has no concern. Our duty is to declare the law as we find it, not to make new law."

Also from **Griffiths C.J, Barton and O'Connor JJ** page 5

"Taxation differs from exaction in that the obligation to contribute depends upon prescribed differentiations of the persons from whom, or the things in respect of which, the contribution is to be made. The power to tax necessarily involves the power to select the subjects of taxation"

Comment: This doctrine or precedent you can use with the original meaning at 1900 also by Higgins. J in Brewery Union case 1908.

Higgins. J: End of second paragraph on page 32 PDF version Austlii.

"It is conceded on all sides that this Court is not to be bound by the name which Parliament has chosen to give to the Act, but is to consider what the Act is in substance-what it does, what it commands or prescribes. But if, in fact, the Act purport to impose a tax, the Court has to assume that the primary object is the raising of revenue, even though the Act should in fact be passed with the view of destroying State banks in favour of national banks: Veazie Bank v. Fenno[79]; or of protecting manufacturers; or of preventing oleomargarine from being sold as butter: Ex parte Kollock[80]; or of discouraging speculative sales in Wall street, New York: Treat v. White[81]. In some cases the American Courts seem to treat this assumption as a *presumptio juris et de jure*-a presumption that cannot be rebutted. But, at all events, the doctrine is clearly established. The question, then, for us, is not why, or with what object, the Federal, or State Parliament has passed an Act, but whether it is within the scope of its powers; not why the Federal Parliament ploughs this ground, but is the ground within the boundaries of any of the federal powers? This doctrine, as to the immateriality of motives, is not an exceptional doctrine, applicable only to Constitutions.

According to English law, a man who has a legal right to property cannot be interfered with in the exercise of his rights, even if he exercise them with vindictive or blackmailing motives: Bradford Corporation v. Pickles[82]." (House of Lords case 10894-1895 on tort re Pickles redirecting water.)

[Praesumptio Juris Et De Jure | Free Online Dictionary of Law Terms ...](#)

legaldictionary.lawin.org/praesumptio-juris-et-de-jure/ **Meaning of Praesumptio juris et de jure** (Lat.) In Roman law. A deduction drawn, by reason of some rule of law, from the existence of one fact as to the existence of another, so conclusively that no proof can be admitted to the contrary. A conclusive presumption.

[Juris et de jure - Legal Dictionary - The Free Dictionary](http://legal-dictionary.thefreedictionary.com/Juris+et+de+jure)

legal-dictionary.thefreedictionary.com/Juris+et+de+jure

JURIS ET DE JURE. A phrase employed to denote conclusive **presumptions** of law, which cannot be rebutted by evidence. The words signify of law and from law Best on Presumption, Sec. 17. ...

Comment: For instance the Bill of Rights Act 1688-89UK, Estate in Fee Simple right to use your property without restriction etc. 2 Hen 4 yr 1400UK Access to Courts Act; Habeas Corpus Act 1641UK, all law subject to the Commonwealth of Australia Constitution Act 1900UK and so on that there is no evidence to rebut the conclusive presumption.