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## INTRO: CIVIL JUSTICE SYSTEM

### ***Supreme Court Rules 2005 (Vic) Order 1 rule 14***

- **Exercise of power**
- (1) In exercising any power under these Rules the Court—
  - (a) Shall endeavour to ensure that all [questions](#) in the [proceeding](#) are effectively, completely, promptly and economically determined;
  - (b) May give any direction or impose any term or condition it thinks fit.
- (2) The Court may exercise any power under these Rules of its own motion or [on the application of](#) a [party](#) or of any person who has a sufficient interest

### Inherent Jurisdiction

- The overall purpose of IJ' is to allow the courts to regulate their process and to prevent abuse of process: *Riley Mckay Pty Ltd v Mckay* [1982]
- **The Test:** whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide (*Johnson v Johnson*)

### ***Civil Procedure Act 2010 (Vic), s7***

- **Overarching purpose**
- (1) The overarching purpose of this Act and the rules of [court](#) in relation to [civil proceedings](#) is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute

*Aon Risk Services v Australian National University* (2009) 239 CLR 175 (Colbran pg 59)

### “Efficiency v Justice”

- In seeking the just resolution of the dispute, reference is made to parties having a sufficient *opportunity* to identify the issues they seek to agitate

### ***Principles of Open Justice***

- Open Justice: A principle of the common law that proceedings ought to be open to the public, including the contents of court files and public viewing of trials
  - The need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. -Justice Tugendhat

- Statutory exceptions:
  - Crime and Corruption Act 2001 s 332
  - Child Protection Act 1999
  - Youth Justice Act 1992
  - Criminal Law (Sexual Offences) Act 1978

## THE VICTORIA COURT HIERARCHY

### Jurisdiction Requirements

- To have Jurisdiction is to have Power, the power to grant remedies
- A court must have **jurisdiction over both** the “defendant” and the “subject matter of the dispute”
- **Federal jurisdiction** must relate to a *matter*

### *The High Court*

- **Judiciary Act 1903 (Cth)** Section 38
- Matters which are within the original jurisdiction of the High Court and which may be regarded as having the greater national or federal significance

### *The Federal Court*

- Federal Court's powers extend to 'whatever is incidental and necessary to exercise of that jurisdiction and to the exercise of any powers conferred by legislation': *Wardley Australia v WA*
- **Paragraph 39B(1A)(b)** by specific conferral -- that the Federal Court was conferred with jurisdiction to determine the constitutional validity of an Act conferring jurisdiction upon it
  - The effect of **Para 39B(1A)(c)** is to vest the Federal Court with jurisdiction:
    - - Any *matter*;
    - - *Arising under* any laws of the Commonwealth Parliament

### Any Matter

- Claims which are ‘completely disparate’ or ‘completely separate and distinct’ or ‘distinct and unrelated’ are not part of the same matter

Arising under

- A matter 'arises under' a law of the parliament if it creates a cause of action under a federal law

### ***Victoria: a typical state judicial hierarchy***

#### ***The Magistrates' Court***

- **Magistrates' Court Act 1989 (Vic)**
- The Magistrates' Court can determine most disputes over money or property up to the value of \$100 000, however in certain circumstances the Court can hear cases with an unlimited value

#### ***The County Court: unlimited civil jurisdiction***

- **S 36 Proceedings arising outside Victoria**
  - Pursuant to **s 36**, the court has the power to hear and determine every proceeding in respect of which jurisdiction is conferred on it provided that a **material part of the action arose within Victoria**
    - It also has power to hear and determine every such proceeding provided that the defendant **resided within Victoria** at the time of the service of the originating process upon such defendant

#### ***The Supreme Court***

- The Supreme Court's jurisdiction is unlimited

When jurisdiction exists

- **Jurisdiction over the person:**
  - The court has jurisdiction of the defendant's person, or ***in personam jurisdiction***, where there has been due service of the originating process on the defendant:  
***Laurie v Carroll* (1957) 98 CLR 310**
- **Jurisdiction over the property or thing:**
  - Jurisdiction ***in rem*** arises where the court can exercise command or control over the property or thing (*res*)
    - Jurisdiction in an action *in rem* arises where the action concerns property located in Victoria