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3 – Preliminary Discovery, Jurisdiction, Originating process and Service

Key Concepts

- Preliminary discovery and urgent applications
- Choice of jurisdiction and forum
- Originating process and service as foundation of jurisdiction
- Service: outside jurisdiction, substituted, informal and dispensation

Preliminary discovery

Preliminary discovery: for unsure of the identify of a prospective defendant/ whether accrued a cause of action → obtain sufficient information

Rule 32 SCR/CCR/MCR

R32.03 – for identifying prospective defendant

Also applicable for someone who is a non-party, available by summons for SC/CC or application for MC (R604)

△ Note: this text is not the original wording of the legislation – it has been paraphrased

R32.03 – Preliminary discovery to identify a prospective defendant

- Available where: the applicant, after reasonable inquiries, can't sufficiently identify a person to sue; and it appears someone has (or likely has) knowledge or a relevant document that would help identify them.
- Court may order that person (or a corporation's appropriate officer) to attend for oral examination and/or make discovery of relevant documents.
- If ordered to attend examination, the Court may also require production of relevant documents at the examination, and may direct the examination be held before an Associate Judge.

△ Note: this text is not the original wording of the legislation – it has been paraphrased

R32.04 – Extension to existing parties

- R32.03 applies with modifications where the applicant is already a party wanting to bring a proper claim against a non-party they could have joined originally.

R32.05 – for determining whether to commence proceedings

Also can be applied to a non-party by summons (SC/CC) or application (MC) (R32.06)

△ Note: this text is not the original wording of the legislation – it has been paraphrased

R32.05 – Preliminary discovery of documents from a non-party

- Available where: there's reasonable cause to believe the applicant may have a right to relief against an already-identified person; after reasonable inquiries the applicant lacks enough information to decide whether to sue; and there's reasonable cause to believe that person has/had a relevant document, inspection of which would help the applicant decide.

respect of which jurisdiction is conferred upon it by this or any other Act,

*notwithstanding that part of the cause of action arose outside Victoria, provided that a **material part of the cause of action arose within Victoria**, and*

*shall have power to hear and determine every such proceeding notwithstanding that the whole cause of action arose outside Victoria, provided that the defendant or accused **resided within Victoria at the time of the service** of the originating process upon such defendant or accused.*

⚠ Note: this text is not the original wording of the legislation — it has been paraphrased

S37 CCA — County Court general jurisdiction

- Court can hear/determine: any application/claim/dispute/civil proceeding not excluded by this or another Act; civil claims against municipal councils for accident-related loss/injury on council-controlled roads/paths/land/buildings; and any other civil matter given to it by an Act.
- No jurisdiction over prerogative-writ-type applications, or proceedings brought on a Supreme Court judgment.
- If a verdict/judgment exceeds the amount P sought, the Court must record the actual amount — P can still recover the full (or Wrongs Act Part V-reduced) amount even though it's more than originally claimed.

- Magistrate Court – general civil jurisdiction over claims up to \$100,000 can exceed that limit with consent in writing (s100, s3 MCA)

⚠ Note: this text is not the original wording of the legislation — it has been paraphrased

S100(1)–(4) CCA — Court's jurisdiction (County Court)

- Court has jurisdiction to hear claims for damages/debt/liquidated demand, or equitable relief, up to the jurisdictional limit — or beyond it if all parties consent in writing.
- Also covers certain VCAT-transferred applications (s57B VCAT Act) and any other matter given to the Court by another Act.
- No jurisdiction over: the validity/effect of an exercise of royal prerogative or statutory power; prerogative-writ-type proceedings; or matters based on a Supreme/County Court judgment.
- The jurisdictional limit doesn't apply to certain matters under the Accident Compensation Act, VCAT Act Part 3A, or the Workplace Injury Rehabilitation and Compensation Act.
- A valuer's certificate as to a property's value is admissible evidence of that value for jurisdictional-limit purposes.
- Jurisdiction over a cause of action isn't lost merely because part (or even all) of it arose outside Victoria, provided a material part arose in Victoria, or D resided in Victoria when served.

*the Court may order that the **whole or part of the indorsement or pleading be struck out or amended.***

Hearings and Trials

Court	Provision	Details
1. Magistrates Court — Proceedings are fixed for hearing by single magistrate	Order 49 MCR	• Rule 49.02 SCR/CCR/MCR — If any party absent, Court may: • order the proceedings not be heard unless fixed for hearing/trial again • proceed with the hearing/trial • adjourn the proceedings
2. County Court — Proceedings set down for trial; trial may be by jury of 6	Orders 34A, 47, 49 CCR	(see Rule 49.02 above)
3. Supreme Court — Proceedings set down for trial; trial may be by jury of 6	Orders 47–49 SCR	(see Rule 49.02 above)

Order and judgments

Court	Provision	Details
1. Magistrates Court — Court may make such order as the case requires notwithstanding such order was not sought in the complaint	Order 59 MCR	• Unless otherwise ordered — the judgment/order takes effect on and from the date it was given or made; and • if the order/judgment is for a person to do an act, time for compliance is 14 days from date of service, except: payment of money / delivery of goods / possession of land (SCR/CCR) (time to be fixed by the Court)
2. County Court / Supreme Court — Court may give such judgment or make such order as the case requires notwithstanding such judgment/order was not sought in the originating process	Order 59 CCR/SCR	(see above)