GUIDANCE

Funds in Court Legislative Framework

Preface

The employees of Funds in Court (FIC) act on behalf of the Senior Master, and consequently, the Supreme Court.

FIC, as part of the Court, is not a government agency and, therefore, does not administer legislation in the sense that a government agency would. It does, however, comply with the requirements of legislation that applies either directly or indirectly to the:

- Court
- Senior Master
- funds held by the Senior Master
- employees of FIC in the performance of their duties.

Additionally, as the Senior Master administers funds on behalf of over 7,00 clients under a legal disability, ANY legislation that may apply to such persons (whether as ordinary citizens or people for whom the Senior Master administers funds in Court) must, necessarily, have an effect on the work of FIC.[1]

Considered directly relevant

FIC as part of the Supreme Court

As an Associate Judge, the Senior Master is a judicial member of the Supreme Court of Victoria and, pursuant to section 75 of the *Constitution Act 1975* (Vic), they, along with the Chief Justice, President of the Court of Appeal, Judges, Associate Judges and Judicial Registrars, constitutes the Court.

***Constitution Act 1975* (Vic)**

Section 75

The Court consists of the Judges of the Court, the Associate Judges of the Court and the judicial registrars of the Court.

The powers of the Senior Master arise from the *Supreme Court Act 1986* (Vic) ('the Act') and the *Supreme Court (General Civil Procedure) Rules 2025* ('the Rules'). In particular, the Senior Master's authority to administer the funds in Court is drawn, mainly, from sections 113, 113A and 113B of the Act and Orders 15, 77 and 79 of the Rules.

***Supreme Court Act 1986* (Vic) ('the Act')**

Section 104

Associate Judges to be appointed and must include the Associate Judge who is the Senior Master. Provision for Acting Senior Master if office becomes vacant.

[1] An example of the legislation that may apply to the clients can be found at: https://www.justice.vic.gov.au/justice-system/laws-and-regulation.

Section 105A

Determines which Associate Judge exercises the Senior Master's duties and powers in their absence.

Section 110

The Senior Master has the duties, powers and authorities imposed or conferred on them by or under this Act or any other Act or the Rules.

Section 113

Section 113 of the Act is titled "Common Funds". The effect of the section is to govern how funds paid into Court are to be administered. Section 113, essentially, governs the operations of FIC.

Section 113A

Provides, *inter alia*, for the creation and operation of Common Fund No. 3.

Section 113B

Provides that the Senior Master has powers as an Administrator in respect of the funds in Court, where an Administrator has not been appointed, and allows the Senior Master to delegate those powers.

Section 127

The Victorian Auditor-General must audit the accounts of the Senior Master relating to the collection of public money. This applies to Common Fund No. 1 only as the other common funds hold private funds.

The Senior Master, however, has a long-standing invitation to the Auditor-General to audit all accounts of the Senior Master. See discussion below re: *Audit Act 1994* (Vic).

Section 128(2)

All interest derived from the investment of moneys in the nature of security for costs must be paid to the Consolidated Fund.

Supreme Court (General Civil Procedure) Rules 2025 ('the Rules')

Order 15 - Person under Disability

Order 15 deals with litigation in which a party is "a person under disability". It provides *inter alia* that:

- a person must be represented by a litigation guardian
- a compromise of a person's claim must be approved by the Court.

before the Court makes an order to satisfy a judgment, it must take into account the person's best interests. See below regarding how this impacts on orders of other courts.

Rule 15.09

Rule 15.09 applies where a person under disability is required by a judgment to pay money, and that person has funds in Court. Rule 15.09(2) requires that, before the Court makes an order releasing funds to satisfy a judgment, it must take into account the best interests of the person under disability. It should be noted that, for the purposes of rule 15.09, a judgment includes an order of the Court.

Therefore, for example, if the Family Court were to give a judgment, it may not necessarily result in the release of the funds in Court (where an order of the Court would be required). This is because the Senior Master is first obliged to consider the best interests of the person under disability. The same would apply to a judgment debt in another court.

Order 77 – Authority of Associate Judges

Distributes the business of the Court between the Judges and Associate Judges including the Senior Master (who is an Associate Judge). Allows for appeal from an Associate Judge to a Judge.

Rule 77.01 "Parens Patriae"

Rule 77.01 of the Rules confers upon the Associate Judges the power to "give any judgment or make any order, including any judgment or order in the inherent jurisdiction of the Court". The inherent jurisdiction of the Court includes the exercise of the *parens patriae* power of the Sovereign for the protection of the person and property of mentally infirmed persons. It is this jurisdiction that is exercised by the Senior Master in administering the funds in Court for and on behalf of persons under disability.

Order 79 - Funds in Court

The requirements of Order 79 determine many of FIC's procedures, including:

- payment out of the funds
- provision of a certificate of receipt
- delay in paying in funds
- all investments made from moneys forming part of any common fund shall be made in the name "The Senior Master of the Supreme Court of Victoria"
- the payment of interest, either to a client's account, or on the interest earned when money is paid out of Court
- the appointment and jurisdiction of a Judicial Registrar to FIC
- provides for properties on behalf of clients to be held in the name of the "Senior Master of the Supreme Court of Victoria" (Rule 79.07).

Funds paid in/out pursuant to other Court or Tribunal Acts

***County Court Act 1958* (Vic)**

***Magistrates' Court Act 1989* (Vic)**

***Victims of Crime Assistance Act 1996* (Vic)**

Victims of Crime (Financial Assistance Scheme) Act 2022

Sections 39C, 101B, 70A and 70 of the respective Acts provide for payment to the Senior Master of funds awarded to persons under disability. Funds are paid in as if an order was made in a proceeding of the Supreme Court.

Funds paid in/out pursuant to other legislation

***National Disability Insurance Scheme Act* 2013 (Cth) ('NDIS Act')**

National Disability Insurance Scheme (Supports for Participants – Accounting for Compensation) Rules 2013 ('Compensation Rules')

FIC's clients may have their NDIS entitlements affected by their common law.

Section 11 of the Act defines what is 'compensation' for the purpose of the NDIS Act.

The Compensation Rules are regulations related to the assessment and determination of reasonable and necessary supports funded for participants under the NDIS. They address matters related to compensation and how it impacts the provision of supports to NDIS participants.

Sentencing Act 1991 (Vic) ('the Act')

Section 85B

This Act provides for the making of a compensation order against a person convicted of a crime. Compensation paid to a person under a legal disability may be paid into Court.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018 ('the Rules')

Order 20 of the Rules provides for the Court to act as a Court of Disputed Returns. Fees paid to commence a proceeding are paid into Court.

Transfer of Land Act 1958 (Vic)

Section 77(3)(d) of the *Transfer of Land Act 1958* (Vic) provides for the payment of the residue (if any) into the Supreme Court under the provisions so far as they are applicable of s 69 of the *Trustee Act 1958* (Vic).

Trustee Act 1958 (Vic)

Where any person holds funds as trustee for another and wishes to pay the funds into Court, s 69 of the *Trustee Act* allows that person to pay the funds into Court and, by so doing, free themselves from responsibilities, for example:

Section 69

- where an Executor of a Will holds funds for a minor client
- where a person refuses to accept entitlement, or cannot be located.[2]

Unclaimed Money Act 2008 (Vic)

Section 87

If money has been paid into Court and no claim, application or other proceeding for or in respect of the money is made for a period of 15 years, at the end of the 15 year period of inactivity with respect to the money, the money must be paid into the Consolidated Fund.

Court administration generally

Court Services Victoria Act 2014 (Vic)

Court Services Victoria (CSV) is a body corporate established on 1 July 2014, pursuant to the *Court Services Victoria Act 2014* ('the CSV Act'). The object of the CSV Act is to support judicial independence in the administration of justice in Victoria by establishing CSV to provide the administrative services and facilities necessary for the Victorian Courts and the Victorian Civil and Administrative Tribunal to operate independently of the direction of the executive branch of government.

The function of CSV is to provide, or arrange for the provision of, administrative services and facilities necessary or desirable to support the judicial, quasi-judicial and administrative functions of the:

- Supreme Court of Victoria
- County Court of Victoria
- Magistrates' Court
- Victorian Civil and Administrative Tribunal
- Coroners Court of Victoria
- Children's Court

[2] Section 77(3)(d) of the *Transfer of Land Act 1958* (Vic) provides for the payment of the residue (if any) into the Supreme Court under the provisions so far as they are applicable of s 69 of the *Trustee Act 1958* (Vic).

and to enable the Judicial College of Victoria to perform its functions.

For further information see CSV's website: https://www.courts.vic.gov.au/

Relating to operational matters

Guardianship and Administration Act 2019

Sections 8 and 9

Guidance for guardians and administrators

The *Guardianship and Administration Act* sets out principles and powers for substitute decision making by guardians and administrations that reflect a more contemporary understanding of decision-making capacity and disability. This provides guidance for guardians and administrators when making decisions for a person they represent. This will help them ensure that the person's will and preferences direct the decision making as far as possible.

Whilst these sections do not apply to FIC, as the Senior Master's administration of the funds is a judicial function, FIC's staff are guided by these principles when considering the requests and needs of clients.

Section 179 - Matters before a Court

Especially s 179(3) - Funds ordered to be paid to persons under a disability must be paid into Court and, unless a Court otherwise orders, paid to an Administrator or State Trustees.

***Income Tax Assessment Act 1936* (Cth)**

Section 98

Section 98 provides that the Senior Master is liable to pay tax in respect of trust income as if it were the income of an individual. That income is taxed at ordinary marginal rates.

Section 99A

Governs taxation of income earned by funds held where there is no person "presently entitled". Such income is taxed at the top marginal rate plus the Medicare levy.

Employment-related legislation

Legislation may apply to the Senior Master in their capacity as a person who holds and invests funds on behalf of others or as an employer. The Senior Master complies with the applicable provisions of the relevant employment related legislation, including:

State legislation

***Equal Opportunity Act 2010* (Vic)**

***Occupational Health & Safety Act 2004* (Vic)**

Commonwealth legislation

***Income Tax Assessment Act 1936* (Cth)**

***Fair Work Act 2009* (Cth)**

***Fringe Benefits Tax Act 1986* (Cth)**

Public Administration Act 2004 (Vic) ('the Act')

Staff employed to work for the Senior Master are Victorian Public Servants who are employed by Court Services Victoria.

All employees are bound by the provisions of the Act. The Act provides, *inter alia*, for the Public Sector Standards Commissioner to prepare and issue Codes of Conduct based on the public sector values. The Victorian Public Sector (VPS) Code of Conduct ('the Code') is a public statement of how public sector organisations conduct their business and how they treat clients and colleagues. The Code is binding on any person to whom it applies.

Public Interest Disclosures Act 2012 (Vic)

Section 9(3)

The *Public Interest Disclosures Act* 2012 (Vic) ('the Act') does not apply to the Court (s 9(3)). However, the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and *Judicial Commission of Victoria Act 2016* (Vic) apply to judicial officers (see below). Furthermore, Officers who believe that their disclosure of suspected fraud has not been properly dealt with may be able to report the matter to Victoria Police.

Despite the Act not applying to FIC, the Senior Master has directed that a person making such a disclosure or complaint will be protected as if the disclosure were made pursuant to the Act. The Act provides protection against detrimental action taken against the discloser and the disclosee.

Additionally, the VPS Conduct of Conduct applies to all FIC staff and confirms that staff will be protected against discrimination for reporting unethical behaviour or wrongdoing providing that their claim is based on a reasonable belief, and they have reported the matter to the appropriate person. This may be the Senior Master, the Chief Executive Officer – Funds in Court, or their Manager.

The Senior Master as a Judicial Officer

Independent Broad-based Anti-corruption Commission Act 2011 (Vic)

The Victorian parliament has introduced legislation for the establishment of an Independent Broad-based Anti-Corruption Commission (IBAC). Its functions are broadly based and extend to most arms of government, including judges. The inclusion of judges does not mean there is a concern about the integrity and honesty of Victorian judges. There has never been a case of a corrupt judge in Victoria.

The IBAC Act makes it clear that only the conduct of a judicial officer is open to investigation, **not the merits of a decision, order or judgment** made by the judicial officer. The IBAC must dismiss a complaint or a notification to the IBAC about the conduct of a judicial officer if the complaint or notification directly relates to the merits of a decision made, an order made or a judgment given by the judicial officer.

For further information see IBAC's website: http://www.ibac.vic.gov.au

Judicial Commission of Victoria Act 2016 (Vic) ('the Act')

The Act provides for investigations into the conduct or capacity of judicial officers and non-judicial officers of VCAT. A complaint must be about the **conduct or capacity** of a judicial officer or VCAT member. The Commission cannot investigate complaints about the correctness of a decision made by a judicial officer or VCAT member. The Commission must dismiss complaints of this nature without taking any further action. If a person wishes to challenge the correctness of a decision, they may wish to seek legal advice about whether they have appeal or review rights to a higher court.

For further information see the Commission's website: www.judicialcommission.vic.gov.au

Considered indirectly relevant - voluntary compliance

As a judicial member of the Court, the Senior Master is not subject to legislation which excludes the Court from its operation. However, where compliance with such indirectly relevant legislation, in the opinion of the Senior Master, ensures that the interests of clients and other interested parties are protected, and where the provisions of such legislation represent "best practice", the Senior Master complies voluntarily with the relevant provisions.

Audit Act 1994 (Vic)

Whilst s 127 of the *Supreme Court Act 1986* (Vic) requires the auditing of public moneys held by the Senior Master (i.e. only Common Fund No. 1), the Senior Master has a long-standing invitation to the Auditor-General to audit all accounts of the Senior Master.

Sections 24, 25

Section 16G of the Audit Act requires the Auditor-General to conduct financial audits in the same manner as statutory audits when so invited, but s 25 makes it clear that it **does not** extend to reporting matters relating to waste, probity and financial prudence to Parliament under s 3A.

Charter of Human Rights and Responsibilities Act 2006 (Vic) ('the Charter')

The Charter sets out the basic rights, freedoms and responsibilities of all people in Victoria as well as the responsibility of public authorities.

The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to promote and act consistently with the human rights in the Charter. Whilst the Charter does not apply directly to FIC or the Court, it is important that all staff are aware of its requirements and treat clients and their carers according to the Charter's principles of Freedom, Respect, Equality and Dignity.

All FIC staff understand that they all have a part to play in embedding a human rights culture into their everyday work to ensure better outcomes for Victorians. As such, all staff have attended the Victorian Equal Opportunity & Human Rights Commission's training on Charter rights and obligations and capability to contribute to a strong human rights culture.

For further information see: https://www.humanrights.vic.gov.au/for-public-sector/human-rights/

Financial Management Act 1994 (Vic) ('the Act')

The Victorian Solicitor-General has confirmed that the Act does not apply to the Senior Master. The Senior Master's governance structure in respect of investment of funds held in Court is considered robust and transparent. However, the Senior Master voluntarily complies, as a matter of best practice, with the Financial Management Compliance Framework and the Tax Compliance Framework.

Privacy and Data Protection Act 2014 (Vic) ('the Act')

Section 10

Exempts courts from the operation of the Act. However, the Senior Master has very strict privacy policies and procedures which conform to the requirements of the Act and Privacy Principles. This was confirmed by the Senior Master's internal auditors.

For further information see the website of the Office of the Victorian Information Commissioner: https://ovic.vic.gov.au/

Public Records Act 1973 (Vic)

The Senior Master's annual financial statements are forwarded to the Public Records Office for safekeeping.

Clients' records are, in the main, not considered public records as they pertain to the affairs of individuals. To the extent that clients' records, or parts thereof, are considered public records, they will be transferred to the Public Records Office.

Trustee Act 1958 (Vic)

Part I, which includes the following sections:

- 5- Investment of trust funds
- 6- Duties of trustee
- 8- Matters to which trustee must have regard
- 11- Power to purchase a dwelling house.

The Senior Master invests funds pursuant to the requirements of the Act, Part I in particular. Whilst the Senior Master is not strictly a trustee, they comply with the law pertaining to the duties and responsibilities of trustees and trustee investments.

Considered indirectly relevant - compliance not necessary

Some legislation may be considered indirectly relevant to the Senior Master and the operations of FIC. However, where such legislation excludes the Court from its operations and the Senior Master is of the opinion that such legislation, if it were to apply to the Senior Master, would:

- not be in the best interests of clients; or
- offend against the Senior Master's position as a Judicial Member of the Court; or
- fetter the Senior Master's independence; or
- provide no operational benefits to the FIC;

the Senior Master will not comply voluntarily with the provisions of such legislation.

Freedom of Information Act 1982 (Vic) (‘the Act’)

Section 6

Section 6 provides, in effect, that the Act does not apply to the Court. There is no provision of the Act or Regulations purporting to apply it to the Senior Master.

Guardianship and Administration Act 2019 (Vic)

Part 3

Section 46 - Powers of Administrators

A person's financial assets **do not** include the funds in Court. The funds in Court are the sole responsibility of the Senior Master.

Consequently, an Administrator cannot utilise the funds in Court unless they have made application to the Senior Master and they have, by order, provided for the requested use of the funds.

Section 61 - Accounts

Further, when accounting to VCAT, an Administrator is under no obligation to account for the funds in Court. More importantly, State Trustees or VCAT **do not** have the jurisdiction to demand that either the Administrator or the Senior Master account to them for the use of the funds in Court.

Ombudsman Act 1973 (Vic) (‘the Act’)

The Act does not apply to the Senior Master or any administrative decision made by the Senior Master.

Schedule 2

Schedule 2 sets out who or what is an "exempt person or body" for the purposes of the Act.

Whilst the Ombudsman has the power to investigate decisions, actions and conduct of Victorian government departments and statutory bodies, the Ombudsman does not have power to investigate any administrative action taken by a court of law or by a judge (including and associate judge or judicial registrar) as these are considered exempt persons or bodies pursuant to Schedule 2.

See further: https://www.ombudsman.vic.gov.au/