

LEGISLATIVE ASSEMBLY

Read 1° 28 November 1979

(Brought from the Legislative Council)

A BILL

for

An Act to repeal the *Magistrates' Courts (Amendment) Act 1978*, to amend the *Magistrates' Courts Act 1971* and the *Magistrates (Summary Proceedings) Act 1975* with respect to the Civil Jurisdiction of Magistrates' Courts, to amend the *Water Act 1958*, and for purposes connected therewith.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Magistrates' Courts (Civil Jurisdiction) Act 1979*. Short title.

(2) The *Magistrates' Courts Act 1971* is in this Act referred to as the Principal Act. Principal Act No. 8184. Reprinted to No. 8718. Subsequently amended by Nos. 8731, 8942, 8998, 9008, 9042, 9075, 9152, 9154 and 9226.

10 (3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.

Repeal of
No. 8152.

2. The *Magistrates' Courts (Amendment) Act 1978* is hereby repealed.

Amendment of
No. 8184 s. 3.

3. In section 3 of the Principal Act for the interpretation of "Civil matter" there shall be substituted the following interpretation:

"Civil matter."

"Civil matter" means proceeding in relation to a cause of action for a debt or liquidated demand or a cause of action for unliquidated damages but does not include the enforcement in connexion with any such proceeding of a conviction or a fine or any order for imprisonment in default of payment of a sum of money.'

Amendment of
No. 8184 s. 4.
Alteration of
sitting days.

4. In section 4 (2) of the Principal Act the expression "in its ordinary jurisdiction or in its special jurisdiction, as the case may require," is repealed.

Amendment of
No. 8184
s. 22A.

5. In section 22A of the Principal Act in paragraph (a) for the words "civil matter" there shall be substituted the words "matter other than a cause of action for a debt or liquidated demand or a cause of action for unliquidated damages".

Amendment of
No. 8184 s. 24.
Keeping copy
summons
deemed to be
keeping
register.

6. After section 24 (1) of the Principal Act there shall be inserted the following sub-section:

"(1A) Where the clerk of a Court files and keeps copies of every summons issued out of that Court in the civil jurisdiction he shall be deemed to be keeping a register within the meaning of sub-section (1) of the matters in the civil jurisdiction of the Court."

Amendment of
No. 8184 s. 26.
Powers of clerk
of Magistrates'
Court.

7. In section 26 of the Principal Act after paragraph (a) there shall be inserted the following paragraph:

"(aa) he may conduct the examination on oath of judgment debtors as to their means of satisfying the orders against them;"

Amendment of
No. 8184 s. 46.
Refusal to
attend for oral
examination.

8. In section 46 of the Principal Act after sub-section (1) there shall be inserted the following sub-section :

"(1A) If any person—

(a) having been summoned under section 132 of the *Magistrates (Summary Proceedings) Act 1975* to attend at a Magistrates' Court for examination by the clerk of that Magistrates' Court and having been paid or tendered a reasonable sum for travelling expenses and subsistence refuses or neglects without sufficient cause to appear; or

(b) having

- (b) having been so summoned and appeared as required refuses to be sworn or to answer any lawful question; or
- (c) in the opinion of the clerk of that Magistrates' Court is guilty of wilful prevarication—

5 the clerk of that Magistrates' Court shall report the refusal neglect or prevarication to the next practicable sitting of the Magistrates' Court and thereupon the chairman may give such directions and make such orders under sub-section (1) as if the person summoned to attend before the clerk were summoned to attend before the Court
10 and as if the refusal neglect or prevarication so reported had occurred before the Court.”.

9. In section 49 of the Principal Act in paragraph (b) after the word “charges” there shall be inserted the expression “(if any)”.

Amendment of No. 8184 s. 49. Rules.

10. (1) In section 50 (1) of the Principal Act—

- 15 (a) paragraph (b) is repealed;
- (b) in paragraph (c) for the expression “\$200” (where twice occurring) there shall be substituted the expression “\$3000”;
- 20 (c) for paragraph (d) there shall be substituted the following paragraphs:

Amendment of No. 8184 s. 50. Repeal of provisions as to damages for assault.

“(d) where the amount claimed does not exceed \$3000 it may hear and determine any cause of action—

- 25 (i) for a debt or a liquidated demand whether on balance of account or otherwise and make the necessary orders therein together with an order for the payment of interest not exceeding 12 per centum per annum upon any claim for money lent or for money due upon a bill of exchange promissory note or cheque; or
- 30 (ii) for tax payable under any Act and interest thereon;

Jurisdiction in civil cases.

(da) where the amount value or damages sought to be recovered is or are not more than \$3000 it may hear and determine any cause of action arising out of a contract expressed or implied;

(db) where the amount value or damages or the value of the chattel sought to be recovered is or are not more than \$3000 whether on balance of account or otherwise it may hear and determine any cause of action in tort (including any cause of action in detinue or under Part IV. of the *Wrongs Act* 1958);”.

(2) In section 50 (3) of the Principal Act for the words “civil debt recoverable summarily” there shall be substituted the words
45 “debt or liquidated demand”.

11. (1) In

Amendment of No. 8184 s. 51. Constitution of Court.

11. (1) In section 51 of the Principal Act for sub-section (1) there shall be substituted the following sub-section:

“(1) The jurisdiction conferred upon a Magistrates’ Court by section 50 (1), paragraphs (c), (d), (da) and (db), shall be exercised by a Magistrates’ Court consisting of a stipendiary magistrate sitting alone without any other justice or justices.”

(2) In section 51 (2) of the Principal Act for the words “under this section” there shall be substituted the words “in any cause of action arising out of a contract assessed or implied or any cause of action in total”.

(3) Section 51 (3) of the Principal Act is repealed.

Repeal of provisions as to service. Consequential amendment of No. 8184 s. 51.

(4) In section 51 of the Principal Act in sub-sections (4) (where twice occurring), (5), (7) (b), (8) and (9), for the words “determinable summarily” there shall be substituted the words “for unliquidated damages”.

(5) In section 51 (10) of the Principal Act for the words “complaint in respect of any cause of action determinable summarily” there shall be substituted the words “default summons or special summons”.

Amendment of No. 8184 s. 63. Complaints.

12. In section 63 of the Principal Act for the words “civil debts recoverable summarily or causes of action determinable summarily” there shall be substituted the words “debt or liquidated demand or unliquidated damages”.

Consequential amendment of No. 8184 s. 67.

13. In section 67 of the Principal Act for the expression “\$200 (where thrice occurring) there shall be substituted the expression “\$3000”.

Amendment of No. 8184 s. 74.

14. In section 74 (4) of the Principal Act for the word “appellant” there shall be substituted the word “respondent”.

Consequential amendment of No. 8184 s. 88.

15. In section 88 (5) of the Principal Act for the words “civil debt recoverable summarily or in a complaint for a cause of action determinable summarily” there shall be substituted the words “debt or liquidated demand or unliquidated damages”.

Amendment of Act No. 8731 as amended by Nos. 8870, 8897, 9850, 8955, 9008, 9019, 9059 and 9154.

16. In section 4 (1) of the Magistrates (Summary Proceedings) Act 1975 at the end of paragraph (a) there shall be inserted the expression “(including any proceedings authorized or required to be conducted before a clerk of a Magistrates’ Court)”.

Rules of Court.

Amendment of No. 8731 s. 9. Summons.

17. In section 8 of the Magistrates (Summary Proceedings) Act 1975—

(a) in sub-section (1) after the words “to answer to an information or complaint” there shall be inserted the words “not being a default summons or a special summons”; and

(b) after

- (b) after sub-section (1) there shall be inserted the following sub-section:

“(1A) A default summons or a special summons shall be directed to the person against whom the complaint is laid and shall be returnable at the Magistrates' Court out of which it is issued on a day to be fixed by the Clerk of that Court in the event of notice of defence being given by the defendant.”;

- (c) in sub-section (9) for the words “civil debt or in respect of a cause of action determinable summarily” there shall be substituted the words “debt or liquidated demand or unliquidated damages”.

18. For section 9 of the *Magistrates (Summary Proceedings) Act 1975* there shall be substituted the following sections:—

Amendment of No. 8731 s. 9.

9. (1) Upon complaint made in respect of a debt or liquidated demand the clerk before whom the complaint is made shall issue a summons to the defendant to be called a “default summons”.

Default summons to issue upon certain complaints.

- (2) Upon complaint made in respect of a cause of action for unliquidated damages the clerk before whom the complaint is made shall issue a summons to the defendant to be called a “special summons”.

Special summons to issue upon certain complaints.

(3) A default summons or a special summons shall be in or to the effect of the prescribed form and may be issued only by the clerk of the Magistrates' Court in which it is returnable.

Summons to be in prescribed form, &c.

- 9A. (1) A default summons or a special summons may be served by delivering a true copy thereof with two notices of defence in or to the effect of the prescribed form—

Service of default summons or special summons.

- (a) to the defendant personally; or
(b) for the defendant—

(i) at his place of abode—to some person apparently above the age of sixteen years who is apparently residing thereat but where the place of abode is an hotel or a boarding house or similar establishment only to some person apparently above that age who is apparently in charge of the establishment or employed in the office thereof; or

(ii) at any place of business of which the defendant is the proprietor or one of the proprietors—to some person apparently above the age of sixteen years who is apparently in charge of the business or employed in the office thereof.

(2) The person serving a default summons or a special summons may make an affidavit stating the manner in which and the time and place at which the summons was served.

Affidavit of service.

(3) Every

(3) Every document purporting to be an affidavit of service shall be received by a Magistrates' Court or the clerk thereof (as the case may be) as *prima facie* evidence of the service of the summons and notice.

Contents of
notice of
defence.

(4) A notice of defence for the purposes of this Part shall be in writing and shall contain— 5

- (a) a statement of the defendant's intention to defend the matter of the complaint referred to in the summons; and
- (b) particulars of his defence.

Procedure on
default
summons.

9B. (1) If in the case of a default summons the defendant or his solicitor does not give notice of defence within 21 days after service of the summons upon him and the summons or particulars of demand annexed thereto are sufficient to disclose the cause of action and the name of the place where the cause of action is alleged to have arisen the complainant need not attend either personally or otherwise or prove his claim. 10
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(2) Where a complainant is not required as provided in this section to attend or prove his claim he may make and file with the clerk of the Court a request that an order be made in his favour and upon proof of service of the default summons an order in the complainants' favour may be made by the Court, notwithstanding the absence of the complainant, at any time within twelve months after the issue of the default summons or, whether the Court is then sitting or not, by the clerk of the Court. 20

(3) An order (including any award of costs) made by the clerk of the Magistrates' Court on a default summons shall to all intents and purposes be the same and have the same effect and be enforced in like manner as if it were an order of the Magistrates' Court. 25

(4) It shall be a sufficient compliance with the provisions of section 24 (4) of the *Magistrates' Courts Act 1971* if the entries made relating to any order made by the clerk of the Magistrates' Court are signed by the clerk making the order. 30

Procedure on
special
summons.

9C. (1) If in the case of a special summons the defendant or his solicitor does not give notice of defence within 21 days after service of the summons upon him and— 35

- (a) the summons or the particulars of demand annexed thereto are sufficient to disclose the cause of action and the name of the place where the cause of action is alleged to have arisen; and
- (b) the complainant files an affidavit verifying his cause of action and the nature and extent of the injury loss or damage suffered by him— 40

the complainant need not attend either personally or otherwise, or prove his claim.

(2) Where

(2) Where a complainant is not required as provided in this section to attend or prove his claim he may make and file with the clerk of the Court a request that an order be made in his favour and upon proof of service of the special summons an order in the complainant's favour may be made by a stipendiary magistrate in chambers, notwithstanding the absence of the complainant, at any time within twelve months after the issue of the special summons.

(3) If in the course of considering any such complaint the stipendiary magistrate in chambers requires further information or considers it desirable in the interests of justice having regard to all the circumstances of the case that the matter of the complaint should be heard in open court he may adjourn the matter for hearing in open court and shall cause notice to be given to the complainant or his solicitor and to the defendant or his solicitor of the time and place for the hearing of the matter in open court.

Magistrate may adjourn complaint into open court.

9D. (1) Notice of defence may be given by leaving a notice for or posting it to the complainant or his solicitor at their respective addresses set out in the summons and for the clerk of the Magistrates' Court at the place where the Court sits.

Notice of defence.

(2) If the defendant or his solicitor gives notice of defence under sub-section (1) within 21 days after the service of the summons the clerk of the Magistrates' Court shall cause a notice in the form prescribed by the rules to be sent to the complainant or his solicitor and to the defendant or his solicitor fixing a day for the hearing of the matter of the complaint.

9E. (1) If the defendant does not give notice of defence within the time required he shall not be allowed whether by the Magistrates' Court on the hearing of the complaint or by a stipendiary magistrate in chambers or by the clerk of the Court (as the case may be) to make any defence to the claim unless by permission of the Court and then only on such terms as to costs as the Court determines.

(2) Where permission to defend is given under sub-section (1) the hearing of the complaint may be adjourned to some other day to be fixed by the Court if the complainant or his counsel or solicitor so desires or if the Court thinks fit so to do and if the complainant or his counsel or solicitor is not present shall be adjourned in which case the clerk of the Court shall give notice in writing thereof to the complainant or his solicitor forthwith by post or otherwise.

No defence without notice &c.

(3) Where in the case of a default summons or a special summons a defendant does not give notice of defence or ask for time to pay, the clerk of the Court may on the written application of the complainant or his solicitor adjourn the complaint or strike it out or permit it to be withdrawn.

Extension of provisions to water authorities.

9F. The provisions of this Act with respect to default summonses shall extend and apply to the complaints of any authority under the *Water Act 1958* and to the Melbourne and Metropolitan Board of Works to enforce payment of any rates charges or sums due to the authority or to the Board.

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Service on body corporate.

9G. (1) A default summons or a special summons may be served upon a body corporate by leaving it at or posting it to the registered office of the body corporate or in any other manner provided by any Act relating to that body corporate and such service shall be deemed personal service within the meaning of section 9A.

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Service on partners.

(2) Where persons are sued as partners in the name of their firm the summons may be served personally upon one or more of the partners and the service shall be deemed personal service within the meaning of section 9A.

Amendment of No. 8731 s. 17. Issue of summonses.

19. In section 17 (2) of the *Magistrates (Summary Proceedings) Act 1975* for the expression "(including a cause of action determinable summarily)" there shall be substituted the expression "(other than a cause of action for a debt or liquidated demand or a cause of action for unliquidated damages)".

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Amendment of No. 8731 s. 76. Venue.

20. In section 76 (3) of the *Magistrates (Summary Proceedings) Act 1975*—

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(a) in paragraph (a)—

(i) after the words "default summons" there shall be inserted the words "or special summonses"; and

(ii) for the words "intention to defend" there shall be substituted the word "defence"; and

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(b) in paragraph (b) after the words "default summons" there shall be inserted the words "or special summonses".

Amendment of No. 8731 s. 78 (1).

Procedure in cases of summary jurisdiction.

21. (1) In section 78 (1) of the *Magistrates (Summary Proceedings) Act 1975*—

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(a) in paragraph (c) for the words "for a civil debt recoverable summarily or a cause of action determinable summarily" there shall be substituted the words "for a cause of action for a debt or liquidated demand or a cause of action for unliquidated damages"; and

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(b) in paragraph (n) for the words "civil debt or damages including damages for an assault or trespass by cattle or upon the hearing of a complaint set-off or counterclaim for a cause of action determinable summarily" there shall

be

be substituted the words "debt or liquidated demand or upon the hearing of a complaint set-off or counterclaim for unliquidated damages".

5 (2) In section 78 (2) of the *Magistrates (Summary Proceedings) Act 1975*—

(a) for the words "civil debts recoverable summarily or causes of action determinable summarily" there shall be substituted the words "causes of action for debts or liquidated demands and causes of action for unliquidated damages"; and

(b) in paragraph (b)—

(i) the words commencing at the beginning of the paragraph and ending with the expression "(as the case may be)" are repealed; and

(ii) after the word "served" there shall be inserted the expression "and notices of hearing sent to the parties".

22. In section 90 (1) of the *Magistrates (Summary Proceedings) Act 1975*—

(a) for the words "civil debt recoverable summarily" there shall be substituted the words "debt or liquidated demand"; and

(b) for the words "determinable summarily" there shall be substituted the words "for unliquidated damages".

Amendment of
No. 8731 s. 90.
Special
defences.

25 23. (1) In section 91 (1) of the *Magistrates (Summary Proceedings) Act 1975* for the words "a cause of action determinable summarily" there shall be substituted the words "unliquidated damages".

Amendment of
No. 8731
s. 91
Set-off,
counterclaim,
&c.

(2) In section 91 (2) of the *Magistrates (Summary Proceedings) Act 1975* for the words "civil debt recoverable summarily" there shall be substituted the words "debt or liquidated demand".

24. In section 92 of the *Magistrates (Summary Proceedings) Act 1975*—

(a) in sub-section (1)—

(i) for the words "civil debt recoverable summarily" there shall be substituted the words "debt or liquidated demand"; and

(ii) for the words "determinable summarily" (where twice occurring) there shall be substituted the words "for unliquidated damages";

Consequential
amendment of
No. 8731 s. 92.

(b) in

- (b) in sub-section (3)—
- (i) for the words "civil debt recoverable summarily" there shall be substituted the words "debt or liquidated demand"; and
 - (ii) for the words "determinable summarily" there shall be substituted the words "for unliquidated damages";
- (c) in sub-section (4)—
- (i) for the words "civil debt recoverable summarily" there shall be substituted the words "debt or liquidated demand"; and
 - (ii) for the words "determinable summarily" there shall be substituted the words "for unliquidated damages".

Amendment of
No. 8731 s. 95.
Appearance by
agent.

25. In section 95 of the *Magistrates (Summary Proceedings) Act 1975* for the words "civil debt recoverable summarily" there shall be substituted the words "cause of action for a debt or liquidated demand".

Consequential
amendment of
No. 8731 s. 96.

26. In section 96 (1) of the *Magistrates (Summary Proceedings) Act 1975*—

- (a) for the words "civil debt or damages (including damages for an assault or trespass by cattle)" there shall be substituted the words "debt or liquidated demand"; and
- (b) for the words "determinable summarily" there shall be substituted the words "for unliquidated damages".

Amendment of
No. 8731
s. 116.
Interpretation.

27. In section 116 of the *Magistrates (Summary Proceedings) Act 1975* in the interpretation of "Judgment debt" for the words "civil debt recoverable summarily or any cause of action determinable summarily" there shall be substituted the words "debt liquidated demand or damages".

Amendment of
No. 8731 s. 132.
Oral
examination of
debtor.

28. (1) In section 132 of the *Magistrates' (Summary Proceedings) Act 1975*—

- (a) in sub-section (1)—
 - (i) the words "any justice or" are repealed;
 - (ii) for the words "appear before the Magistrates' Court" there shall be substituted the words "appear at the Magistrates' Court nearest or most convenient to his place of residence or business";
 - (iii) after the words "orally examined" there shall be inserted the words "by the clerk of the Magistrates' Court";

(b) in

(b) in sub-section (2) for the words commencing with the words "in the discretion" and ending at the end of the sub-section there shall be substituted the words "in accordance with the rules"; and

(c) after sub-section (2) there shall be inserted the following sub-sections:

"(3) An examination under this section shall be conducted by the clerk of the Magistrates' Court in chambers and no persons other than the judgment creditor and his counsel or solicitor and the judgment debtor and his counsel or solicitor are entitled to be present without the consent of both parties.

(4) The clerk of the Magistrates' Court before whom the judgment debtor is required by the summons to be examined shall carry out the examination as prescribed and shall record the evidence of the persons examined and shall certify on the record the amount of the costs incurred by or on behalf of the judgment creditor in securing the attendance of the judgment debtor before the clerk.

(5) Forthwith after the completion of an examination under this section the clerk conducting the examination shall cause the record of the examination to be transmitted to the party entitled to enforce the original order or his solicitor and to the clerk of the Court which made the original order.

(6) Upon receiving a record transmitted under sub-section (5) the clerk of the Court that made the original order shall cause the matter to be brought before that Court which may make such order as to the costs of the examination as may be prescribed."

(2) The provisions of section 132 of the *Magistrates' (Summary Proceedings) Act 1975* as amended by the provisions of sub-section (1) shall, notwithstanding anything to the contrary in any Act or law, extend and apply with respect to any order of a Magistrates' Court or of justices or a justice whensoever that order was made and whether before or after the commencement of the *Magistrates' Courts (Civil Jurisdiction) Act 1979*.

Transitory provision.

29. In section 154 (1) of the *Magistrates (Summary Proceedings) Act 1975* in paragraph (b)—

Amendment of No. 8731 s. 154. Rehearing.

(a) after the words "default summons" there shall be inserted the words "or special summons"; and

(b) for the words "intention to defend" there shall be substituted the word "defence".

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Amendment of
No. 8731
s. 156.
Interpretation.

30. In section 156 of the *Magistrates (Summary Proceedings) Act 1975* at the end of the interpretation of "Order" there shall be inserted the words "or on an undefended special summons".

Amendment of
No. 6413
ss. 346, 369.
Increase in
jurisdiction as
to recovery
of rates.

31. (1) In section 346 of the *Water Act 1958* for the expression "under the *Justices Act 1958* any such rate which (together with interest) does not exceed \$1,000" there shall be substituted the expression "under the *Magistrates (Summary Proceedings) Act 1975* any such rate which (together with interest) does not exceed the maximum amount recoverable from time to time in a Magistrates' Court in respect of a debt or liquidated demand".

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(2) In section 369 (1) of the *Water Act 1958* for the expression "\$1,000" there shall be substituted the expression "the maximum amount recoverable from time to time in a Magistrates' Court in respect of a debt or liquidated demand".