

Magistrates' Courts (Civil Jurisdiction) Bill

EXPLANATORY MEMORANDUM

The main purpose of this Bill is to amend the *Magistrates' Courts Act 1971* and the *Magistrates (Summary Proceedings) Act 1975* to increase the civil jurisdiction of Magistrates' Courts to \$3000 and to modernize and standardize procedures within that jurisdiction.

Explanatory Notes on Clauses in the Bill

Clauses 2 to 15 deal with amendments to the Magistrates' Courts Act 1971

Clause 2 repeals the *Magistrates' Courts (Amendment) Act 1978* as the provisions of that Act are included in this Bill.

Clause 3 re-enacts the definition of "civil matter" with alterations to accord with the proposed changes in terminology.

Clause 4 deletes superfluous words as summonses are now to be listed for hearing by the Clerk of the Court.

Clause 5 abolishes the power of a Justice of the Peace to issue a default and special summons.

Clause 6. The Clerk of Courts is to retain a copy summons at issue which will form the court records.

Clause 7 extends the power of a Clerk of a Magistrates' Court to conduct oral examinations of judgment debtors.

Clause 8 extends existing contempt provisions to include proceedings for oral-examination before a Clerk; however, any contempt will be referred to the court for any necessary action.

Clause 9. It is contemplated that in undefended matters where the claim is for \$50 and below, no professional costs will be awarded and this clause will allow the Magistrates' Courts Rules to provide accordingly.

Clause 10 provides that the civil jurisdiction of Magistrates' Courts will be up to an amount of \$3000 for debts or liquidated demands and for unliquidated damages. This provision repeals the indebitatus counts and replaces them with a cause of action for debt or liquidated demand. Actions for damages are now included under this section.

Clause 11 confers exclusive jurisdiction in claims for debts and liquidated demands and unliquidated damages on a Stipendiary Magistrate sitting alone.

Clauses 12, 13 and 15 are amendments consequential upon the increase in jurisdictional amount and the change in causes of action within the civil jurisdiction.

Clause 14 corrects an obvious error in section 74 (4).

Clauses 16 to 30 deal with amendments to the *Magistrates (Summary Proceedings) Act 1975*.

Clause 16 extends the Rule making power to include proceedings before a Clerk of a Magistrates' Court.

Clause 17 inserts a new sub-section to enable a default or special summons to be issued without a return date but the return date is to be fixed by the Clerk in the event of a notice of defence being filed.

Clause 18 includes new sections, 9 to 9G as detailed hereunder, which provide the new procedures applicable to default and special summonses. These sections provide the mechanics for issue, service and the making of orders.

9. A default summons is to be the method of recovery where the cause of action is for a debt or liquidated demand and where the cause of action is for unliquidated damage, a special summons will issue.

9A. Provides the method of service for both default and special summonses. Proof of service is to be by affidavit. Notice of defence filed by a defendant is to be in writing and shall contain particulars of defence.

9B. Details the procedure whereby an order will be made on an uncontested default summons. The proposed procedure is basically in accord with the present practice whereby the Clerk of the Magistrates' Court will make the order where notice of defence is not given by the defendant.

9C. Details the procedure whereby an order will be made on an uncontested special summons. The order may be made by a Stipendiary Magistrate in chambers after considering documentary proof of damage filed by the complainant. Should the Stipendiary Magistrate deem it desirable, he may adjourn the matter to open court for hearing and notice will be given to the parties accordingly.

9D. Deals with both default and special summonses where the defendant desires to defend the case.

The Clerk upon receipt of the notice to defend will fix a date for the hearing and notify both parties.

9E. A defendant who does not give notice to defend within the required time shall not be permitted to make any defence except with the permission of the court.

9F. Extends the provisions in respect of default summonses to water authorities.

9G. Provides for service of default and special summonses to corporations and partnerships.

Clause 19 is consequential upon the removal of the power of a Justice of the Peace to issue special or default summonses.

Clause 20 in view of the changes to procedures, the same provisions as to venue will apply to complaints upon both special and default summons.

Clauses 21 to 27 contain consequential amendments to change the terminology to be used in actions for debts or liquidated demands and unliquidated damages claims.

Clause 28 allows an examination of a judgment debtor as to the most appropriate method of satisfying the order. This procedure will be dependent upon a request by the complainant to hold such an examination and will be conducted in chambers by the Clerk of the Magistrates' Court.

Clause 29. On a rehearing application the same procedure is to apply to both undefended default and undefended special summonses.

Clause 30 amends the interpretation of "order" in relation to rehearings to include orders made on undefended special summonses.

Clause 31 amends the *Water Act 1958* and re-enacts section 5 of the 1978 Act proposed to be repealed, with appropriate changes in terminology to accord with provisions proposed in this Bill.

