

Magistrates' Court (Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of the Bill.
- Clause 2 provides that the **Magistrates' Court Act 1989** is called the Principal Act.
- Clause 3 provides for the commencement of the Act. Sections 4, 5(1) and 8 are deemed to come into operation on 1 September 1990. Clauses 6, 7, 9, 10, 11 and 12 are deemed to have come into operation on 14 November 1996. The remainder of the Act comes into operation upon Royal Assent.
- Clause 4 inserts a sub-section (1A) in section 58 of the Principal Act. Sub-section (1A) provides that where a warrant has been recalled and cancelled under section 58(1), a fresh warrant may be issued for the same purpose as the warrant which was recalled and cancelled. This clause is retrospective to 1 September 1990.
- Clause 5 further amends section 58 of the Principal Act. Clause 5(1) amends section 58(2) to provide that where a fresh warrant is re-issued under section 58(1A) the warrant has a life of 5 years from the date that the warrant was originally issued. This clause is retrospective to 1 September 1990.
- Clause 5(2) inserts a sub-section (2A) in section 58 of the Principal Act which provides that if a warrant becomes null and void under section 58(2), the fine and any associated fees and costs cease to be enforceable or recoverable. This sub-section does not apply if part of the fine has been paid, for example pursuant to an instalment order, before the warrant became null and void.
- Clause 5(3) amends section 58(3) of the Principal Act to provide that nothing in sub-section (2A) prevents the issue, with the leave of the court, of a fresh warrant in accordance with section 58(3).
- Clause 5(4) inserts a sub-section (4) in section 58 of the Principal Act which provides that where a fresh warrant is issued in accordance with section 58(3), the fine and any associated costs or fees to which that warrant relates, becomes enforceable or recoverable as if there has been no cessation under section 58(2A).
- Clause 5(5) deems that sub-sections 58(2) and (3) never applied to a warrant referred to in those sub-sections if before the 14 November 1996 those warrants were executed or the fine and associated costs were paid before execution.

- Clause 6 inserts sub-sections (3A) and (3B) in section 73 of the Principal Act. Sub-section (3A) provides that warrants to seize property to be directed to the sheriff may be electronically issued by the registrar of the PERIN Court by entering certain particulars into the computer system used by the Court. Sub-section (3B) provides that a warrant which is electronically issued under sub-section (3A) must not be altered after its issue.
- Clause 7 inserts sub-sections (2A) and (2B) in section 82C of the Principal Act. Sub-section (2A) provides that penalty enforcement warrants to be directed to the sheriff may be electronically issued by the registrar of the PERIN Court by entering certain particulars into the computer system used by the Court. Sub-section (2B) provides that a warrant which is electronically issued under sub-section (2A) must not be altered after its issue.
- Clause 8 amends section 99 of the Principal Act to provide that the PERIN procedure set out in Schedule 7 may be used for an offence for which an infringement notice or penalty notice as defined in Schedule 7 could be issued or for a prescribed offence within the meaning of Schedule 7. This clause is retrospective to 1 September 1990.
- Clause 9 inserts sub-clause (1A) in clause 8 of Schedule 7 to the Principal Act. Sub-clause (1A) provides that on the issue of a warrant under clause 8(1) a prescribed fee is payable by the person or corporation against whom the warrant is issued. This fee can be included in the sums named in the warrant.
- Clause 10 deems any extension of time or payment by instalment arrangement made before 14 November 1996 by a person authorised to execute a warrant, to be an order referred to in clause 7(1)(a) or (b) of Schedule 7 to the Principal Act. The orders referred to in clause 7 are made by the Registrar of the PERIN Court.
- Clause 11 contains a number of transitional provisions.

Where, before 14 November 1996, a warrant has been recalled and a fresh warrant for the same purpose has been issued, clause 11(1) deems the recalled warrant to be cancelled on the date on which the fresh warrant was issued. The fresh warrant and its execution are deemed to be valid despite any lack of power to issue the fresh warrant.

Where, before 14 November 1996, a warrant referred to in section 58(2) of the Principal Act was executed after its expiry, clause 11(2) deems the warrant and its execution to be valid despite that expiry.

Where, before 14 November 1996, a warrant referred to in section 58(2) of the Principal Act had expired and payment or part payment of the fine and associated costs had been made after its expiry, clause 11(3) deems those amounts to have been lawfully demanded and recovered.

Clause 11(4) deems any penalty enforcement warrant, warrant to imprison or warrant to seize property electronically issued to the sheriff before 14 November 1996, to be valid if its issue would have been valid had it been issued in paper form and signed or otherwise authenticated by the person issuing it.

Clause 11(5) deems any penalty enforcement warrant, warrant to seize property or warrant to imprison which was issued under clause 8(1) of Schedule 7 to the Principal Act and included costs of execution and was executed before 14 November 1996, to be lawfully executed.

Where, before 14 November 1996, a warrant issued under clause 8(1) of Schedule 7 to the Principal Act included costs of execution and before execution the amount of the fine and the costs were paid, clause 11(6) deems those amounts to have been lawfully demanded and recovered.

Clause 12 provides that no proceedings may be brought in respect of any matter which by reason of the operation of this Act, is deemed to be valid or lawful or to have been validly or lawfully done. Clause 12 specifically precludes any proceedings seeking damages or compensation, seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or right or an injunction, or seeking a writ or habeas corpus, or seeking any order under the **Administrative Law Act 1978**.

Clause 13 provides that it is the intention of section 12 to alter or vary section 85 of the **Constitution Act 1975**.

Clause 14 provides for statute law revision.

