

Magistrates' Court Bill (No 2)

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

Clause 3 sets out the definitions under the Act.

PART 2—THE MAGISTRATES' COURT OF VICTORIA

Clause 4 establishes one Magistrates' Court of Victoria.

Clause 5 provides for notice of the places, dates and times for the holding of the Court.

Clause 6 provides that the Chief Magistrate make arrangements for magistrates to be in attendance at court.

Clause 7 provides for the appointment of magistrates.

Clause 8 provides for the appointment of an Acting Chief Magistrate.

Clause 9 provides for the appointment of Acting Magistrates.

Clause 10 refers to the Schedule setting out the salaries and allowances for magistrates and acting magistrates.

Clause 11 allows the Governor in Council to suspend a magistrate from office after a notice of suspension is served on a magistrate. The clause provides that a magistrate must not, however, be suspended from office unless an application is first made by the Attorney-General to the Supreme Court. If a magistrate is suspended from office, the Attorney-General must, as soon as practicable, apply to the Supreme Court for determination as to whether a proper cause exists for removing the magistrate from office.

Clause 12 provides that a magistrate must vacate office if he or she reaches the age of 65 or is removed under clause 11.

Clause 13 provides that a magistrate must carry out the duties assigned by the Chief Magistrate.

Clause 14 provides the magistrate with the same protection and immunity as a judge of the Supreme Court.

Clause 15 provides that a Council of the Magistrates must meet at least once a year. At that meeting the magistrates must consider the operation of the Act and Rules, the working of the Offices of the court and inquire into any defects in the administration of the court. The magistrates are required to report annually to the Governor in Council.

Clause 16 provides that magistrates may make rules of court. The rules of court deal with the civil proceedings of the court. The rules may be approved by the majority of the magistrates and are subject to being disallowed by Parliament.

PART 3—OFFICERS OF THE COURT

Clause 17 provides for the appointment of a Principal Registrar and as many Registrars and Deputy Registrars as are necessary. The Registrars have the functions provided by this Act, the regulations and the rules. The principal registrar has a power of delegation to registrars. A deputy registrar is subject to the direction of a registrar.

Clause 18 requires the Principal Registrar to cause a register to be kept of the orders of the court. Any person may, subject to a suppression order and on payment of the prescribed fee, inspect the register. A party to a proceeding may inspect, without charge, that part of the register that relates to that proceeding.

Clause 19 prohibits the publishing of information concerning debtors.

Clause 20 provides that a process may only be issued out of the court by a registrar. Subject to regulations, the principal registrar is required to keep the original of all process issued out of the court.

Clause 21 provides a registrar with powers to issue any proceedings out of the court, administer an oath, extend bail, endorse a warrant to arrest and sign any licence or certificate which the court is authorised to issue. A registrar will not be able to vary the amount or condition of bail.

Clause 22 provides that a registrar must demand and receive prescribed fees.

Clause 23 makes it an offence to engage in extortion and prohibits the impersonation of court official.

Clause 24 provides same immunity to the principal registrar, a registrar and a deputy registrar as is enjoyed by a magistrate.

PART 4—CRIMINAL PROCEEDINGS

Division 1—Jurisdiction

Clause 25 sets out the jurisdiction of the court in criminal proceedings.

Division 2—Procedure

Sub-division 1—General

Clause 26 provides that a criminal proceeding can only be commenced by the filing of a charge which must be on a charge sheet signed by the informant. The charge is not required to be on oath. A proceeding for a summary offence must be commenced within 12 months of the offence.

Clause 27 requires that a charge describe the offence and identify the provision of the Act creating the offence. Any description of property in a charge must be in ordinary language. The clause simplifies the description required to be made in a charge of the owner or owners of property.

Clause 28 provides that on application, a registrar may issue a summons or a warrant to arrest so as to compel the attendance of the defendant.

Clause 29 provides that in relation to a criminal process a magistrate may exercise any of the powers of a registrar.

Clause 30 provides that in relation to prescribed summary offences a prescribed informant may at the time of the signing of the charge sheet issue a summons to answer the charge. The charge and original summons must then be filed with the registrar within 7 days.

Clause 31 provides that under certain circumstances a charge sheet may contain charges for more than one offence.

Clause 32 entitles a defendant to receive without cost a copy of the charge sheet and reasonable particulars of the charge from the informant.

Clause 33 provides that there be a summons to answer a charge which must direct the defendant to attend court on a certain date and time. On application the registrar may

extend the date where there has been difficulty in serving the summons under certain conditions.

Clause 34 provides for the service of a summons upon the defendant.

Clause 35 provides that service of a summons may be proved by evidence on oath, affidavit or declaration. Any affidavit or declaration of service must be filed with the appropriate registrar at least 7 days before the mention date.

Clause 36 provides that in relation to certain offences for service of a summons may be by post.

Clause 37 provides for the service of certain briefs of evidence on the defendant in the case of a charge for a summary offence.

Clause 38 provides that a party to a criminal proceeding may appear personally, by counsel or solicitor or, in the case of an informant, by a police prosecutor.

Clause 39 provides that an unrepresented defendant on an offence punishable by imprisonment must be asked by the court whether they have sought legal advice. The court must then grant an adjournment if satisfied that the defendant has not had a reasonable opportunity to obtain legal advice.

Clause 40 provides that where the defendant does not have a sufficient understanding of English and the offence is punishable by imprisonment the court must not hear and determine the matter without a competent interpreter.

Clause 41 provides that a warrant to arrest may be issued where a defendant does not attend in answer to a summons. The court may proceed to determine a charge for a summary offence in the defendant's absence where there is a failure to attend in answer to bail.

Clause 42 provides that in certain circumstances the property of a defendant must be returned.

Clause 43 provides for the issue, direction and service of summonses to witnesses.

Clause 44 provides that in certain circumstances a summons to produce documents or things allows those documents or things to be produced to the registrar by hand or by post no later than 2 days before the first day that production is required.

Clause 45 requires a witness to comply with a summons or order to appear on an adjourned date.

Clause 46 requires a court to provide a statement in writing of the options under section 398 of the Crimes Act to an unrepresented defendant at the close of the evidence for the prosecution.

Clause 47 requires a defendant who is legally represented to give notice where it is intended to adduce an alibi unless the court grants leave.

Clause 48 defines a representative of a corporation and provides that the representative may appear on behalf of the corporation before the court. A corporation may be ordered to pay a fine where the offence only provides for punishment by imprisonment.

Clause 49 provides that where the defendant is undergoing detention in a youth training centre the defendant may be returned to the youth training centre to complete the sentence pending determination of the hearing or be granted bail subject to completion of the sentence of detention.

Clause 50 provides the court with the power to amend a charge, summons, or warrant to correct a defect or error.

Sub-division 2—Summary Offences

Clause 51 requires that summary offences must be dealt with in accordance with the procedures set out in Schedule 2.

Clause 52 provides that until 1 July 1989 the alternative procedure in Schedule 3 may be used in cases of prescribed summary offences. It is anticipated that the alternative procedure will be superseded in part by Schedule 7 which establishes the procedure for the enforcement of infringement penalties.

Sub-division 3—Offences Triable Summarily

Clause 53 provides that indictable offences listed in Schedule 4 may be heard and determined summarily where the defendant consents and the court is of the opinion that it is appropriate.

Clause 54 sets out the procedure to apply where an indictable offence is tried summarily.

Clause 55 provides that where the court finds that the defendant is not guilty of an offence, the court may nevertheless find the defendant guilty of attempt to commit that offence.

Sub-division 4—Committal Proceedings

Clause 56 provides for a committal proceeding to be conducted in accordance with Schedule 5 and sets out the situations in which a committal proceeding must be held.

Division 3—Warrants

Sub-division 1—General

Clause 57 provides that a court may issue a warrant for arrest, remand, search, seizure of property, imprisonment or detention in a youth training centre.

Clause 58 allows for the recall or cancellation of a warrant.

Clause 59 allows for the issue of a duplicate warrant where the original warrant is lost or destroyed.

Clause 60 provides that certain warrants are not void because of any defect or error.

Sub-division 2—Warrant to Arrest

Clause 61 sets out the situations where a first instance warrant may be issued.

Clause 62 allows the person issuing a warrant to arrest any person to endorse the warrant with a direction requiring that the arrested person to be released on bail. The endorsement must fix the amount of bail and any surety or deposit.

Clause 63 sets out the persons to whom a warrant to arrest may be directed. They are members of the police force and other persons authorised by law to execute a warrant.

Clause 64 authorises the person who is directed under a warrant to arrest to break, enter and search the place named in the warrant and arrest the person who then must be brought before a bail justice or the court as soon as practicable.

Clause 65 allows the arrest of a defendant in situations where the execution copy is not at the time in the possession of the police officer making the arrest. The clause also sets out the procedure to be complied with upon the arrest of the defendant.

Clause 66 sets out the procedure which applies where a person has not already appeared and pleaded to an indictment or presentment and the prosecutor requires a warrant to arrest the person.

Clause 67 sets out the procedure which applies where the person arrested on a warrant under clause 66 is to be committed for trial.

Sub-division 3—Warrant to Imprison

Clause 68 sets out the circumstances in which a warrant to imprison may be issued.

Clause 69 provides that a warrant to imprison may be directed to a member of the police force or other authorised person.

Clause 70 sets out the matters which must be contained in a warrant to imprison.

Clause 71 sets out the procedures which apply in the case of a warrant to imprison for non-payment of a fine where a portion of the fine has been paid.

Clause 72 provides that the provisions of this sub-division apply, with necessary modifications, to a person in a Youth Training Centre.

Sub-division 4—Warrant to Seize Property

Clause 73 sets out the circumstances in which a warrant to seize property may be issued.

Clause 74 authorises the person to whom the warrant to seize property is directed, to seize personal property described in the warrant and under certain circumstances sell the personal property.

Sub-division 5—Search Warrants

Clause 75 provides that a search warrant may be issued as authorised by any Act and must be supported by evidence on oath or affidavit.

Clause 76 provides that a search warrant may be directed to a member of the police force or other authorised person.

Clause 77 provides that the person issuing the search warrant may endorse bail and surety conditions on the warrant.

Clause 78 provides that a search warrant authorises the person to whom it is directed to break, enter and search any place named and arrest the person named. Similar provisions apply for a warrant to search for anything.

Sub-division 6—Remand Warrants

Clause 79 sets out the conditions which apply where a remand warrant may be issued.

Clause 80 provides that a remand warrant may be directed to a member of the police force or other authorised person.

Clause 81 provides a remand warrant must direct that a person be safely conveyed to a prison or police gaol specified in a warrant and must direct the period for which the person is to be kept in custody.

Clause 82 provides that a court must not remand a defendant in custody for a period of more than 8 clear days unless the defendant and the informant provide their consent.

Division 4—Appeals

Sub-division 1—Appeals to County Court

Clause 83 provides that a person may appeal to the County Court against a sentencing order. The procedure to be followed must be conducted in accordance with Schedule 2. An appeal to the Supreme Court on a question of law is deemed to be an abandonment of the right to appeal to the County Court.

Clause 84 provides that the Director of Public Prosecutions may appeal to the County Court against any sentencing order. This must be done in accordance with Schedule 2.

Clause 85 provides that an appeal under s. 458 or 459 must be conducted as a rehearing. The appellant is not bound by the plea entered in the Magistrates' Court.

Clause 86 sets out the powers of the County Court in relation to an appeal under this sub-division.

Clause 87 sets out the powers of the County Court where the appellant makes an appeal against an order made under s. 81 or 83 of the Penalties and Sentences Act.

Clause 88 provides that an appeal under ss. 458 and 459 be conducted in accordance with Schedule 6.

Clause 89 sets out the powers of the County Court where the appellant fails to make an appearance.

Clause 90 provides that the provisions of this Act applies in relation to appeals from the Magistrates' Court to the County Court under another Act.

Sub-division 2—Appeals to Supreme Court from County Court

Clause 91 provides that a person sentenced to imprisonment may in certain circumstances seek the leave of the Supreme Court to appeal against certain sentences of imprisonment made by the County Court. This clause sets out the procedure which is to apply where this clause applies.

Sub-division 3—Appeals to the Supreme Court on a Question of Law

Clause 92 allows a party to a criminal proceeding, which is not a committal proceeding, to appeal to the Supreme Court on a Question of Law. The clause sets out the procedure which is to be complied with where a member of the police force wishes to appeal.

Division 5—Rehearing

Clause 93 allows a person who has been sentenced in criminal proceedings where they did not appear to apply to the court for a rehearing. This clause sets out the proceedings to be followed in relation to an application for rehearing.

Clause 94 sets out the requirements which must be met in relation to a notice of intention to apply for a rehearing.

Clause 95 provides that where a charge sheet was served by post and the court is satisfied that the applicant did not have notice of the charge sheet prior to the hearing, there is an automatic right to a rehearing.

Clause 96 provides that where the applicant is in custody the court may grant a rehearing.

Division 6—Enforcement

Sub-division 1—Ordinary Enforcement Provisions

Clause 97 sets out the procedures to be adopted to enforce the payment of a fine where the person fined was not present when the order was made.

Clause 98 sets out the procedures to be followed in relation to the enforcement of fines against corporations.

Sub-division 2—Procedure for Enforcement of Infringement Penalties

Clause 99 provides that the procedure set out in Schedule 7 may be used instead of commencing a proceeding against a person for a prescribed offence.

PART 5—CIVIL PROCEEDINGS

Division 1—Jurisdiction

Clause 100 sets out the civil jurisdiction of the Magistrates' Court.

Clause 101 allows the court to deal with proceedings which are wholly or partly beyond the jurisdiction of the court.

Division 2—Arbitration

Clause 102 establishes a mechanism by which matters can be arbitrated before the commencement of any trial where the amount of monetary relief sought is less than \$3000.

Clause 103 requires that the arbitration be conducted by the court constituted by a magistrate and states that the court is not bound by the rules of evidence but is bound by the rules of natural justice when conducting an arbitration.

Clause 104 requires that an award made in an arbitration must be in writing and has the effect as if it were an order of the court.

Clause 105 allows the court to award costs except where the monetary relief sought is less than \$500.

Clause 106 provides that the Commercial Arbitration Act does not apply to an arbitration.

Division 3—Prehearing Conferences

Clause 107 provides that the court may order that a complaint which is not required to be referred to arbitration be referred to a magistrate or registrar for a prehearing conference.

Division 4—Transfers, Appeals and Rehearings

Clause 108 provides that a party to a civil proceeding may apply to the Supreme Court or the County Court for an order that the proceeding be transferred to that court.

Clause 109 provides that a party to a civil proceeding may appeal to the Supreme Court on a question of law from a final order of the court. The clause also sets out the procedures to institute such an appeal.

Clause 110 provides that where a final order is made against a person who did not appear they may seek a rehearing of the matter.

Division 5—Enforcement

Clause 111 sets out the means by which the court can enforce its civil orders.

Clause 112 provides that a certificate of the order of the court can be deemed enforceable as a judgment of the Supreme Court, including for the purpose of the Foreign Judgments Act.

Clause 113 provides that Part 3 of the Imprisonment of Fraudulent Debtors Act applies in relation to orders for the payment of money made in a civil proceeding.

Clause 114 provides that where the person entitled to enforce the order dies, the executor or administrator of that person may enforce the order.

PART 6—JUSTICES

Division 1—Justices of the Peace

Clause 115 provides that there continue to be an office of Justice of the Peace and allows for the appointment of Justices of the Peace.

Clause 116 provides that the Governor in Council may revoke the appointment of any person as a justice of the peace.

Clause 117 provides that a magistrate may exercise any power conferred on a justice of the peace and that any common law power of a justice of the peace is only exercisable by a magistrate.

Clause 118 makes it an offence for a person to pretend to be a justice of the peace.

Clause 119 provides a justice of the peace with the same protection and immunity in the exercise of his or her office as is enjoyed by a judge of the Supreme Court.

Division 2—Bail Justices

Clause 120 provides that the Attorney-General may appoint bail justices to perform the functions of a bail justice under the Bail Act.

Clause 121 provides for the automatic appointment of a bail justice where a person holds a prescribed office in the public service.

Clause 122 provides that the Governor in Council may suspend a bail justice from his or her office. Upon the matter first being determined by the Supreme Court, the Governor in Council may remove a bail justice from office.

Clause 123 provides for the circumstances in which a person ceases to hold the office of a bail justice.

Clause 124 provides that a bail justice has the same protection and immunity, when in the performance of his or her duties, as a magistrate.

PART 7—MISCELLANEOUS

Clause 125 provides that all proceedings are to be held in open court unless this or any other Act provides otherwise. Magistrates or counsel must not appear robed.

Clause 126 enables an order to be made to close a court in certain circumstances.

Clause 127 provides for the circumstances in which an order must be made requiring witnesses to remain outside a court until required to give evidence.

Clause 128 provides a court with the power to adjourn and abridge proceedings.

Clause 129 requires that every person giving evidence before the court be examined on oath.

Clause 130 provides that where an offence provides any exception the defendant may present or point to evidence in support of that exception that suggests a reasonable possibility of the existence of facts that if they existed would establish the defence.

Clause 131 provides the court with the power to determine costs and provides for the mandatory ordering of costs on conviction in certain cases.

Clause 132 allows a court to impose costs against a solicitor where the solicitor has caused costs to be incurred improperly in civil proceedings.

Clause 133 sets out the procedures to apply where there is a contempt in the face of the court.

Clause 134 sets out certain proceedings where there is a contempt and allows for a discretion in the court in dealing with contempts in the face of the court.

Clause 135 sets out the procedures to apply where a court wishes to make an enforcement order other than an order to enforce the payment of money.

Clause 136 allows the court to give directions for the conduct of its proceedings.

Clause 137 provides the court with the power to forfeit and sell property in certain circumstances.

Clause 138 provides for the investment of trust money which is not otherwise provided for in this or any other Act.

Clause 139 provides that if this or any other Act makes no provision for the service of a document than it is to be served in accordance with s. 34 (1) of this Act.

Clause 140 sets out the matters for which the Governor in Council may make regulations.

PART—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONALS

Clause 141 repeals the *Magistrates' Courts Act 1971* and the *Magistrates' (Summary Proceedings) Act 1975*.

Clause 142 makes certain amendments to the *Bail Act*.

Clause 143 makes certain amendments to the *Crimes Act*.

Clause 144 makes certain amendments to the *Evidence Act*.

Clause 145 makes certain amendments to the *Imprisonment of Fraudulent Debtors Act*.

Clause 146 makes certain amendments to the *Interpretation of Legislation Act*.

Clause 147 makes an amendment to the *Penalties and Sentences Act*.

Clause 148 makes an amendment to the *Wrongs Act*.

Clause 149 repeals s. 105 of the *Drugs, Poisons and Controlled Substances Act* and s. 312A of the *Constitution Act Amendment Act*.

Clause 150 provides that Schedule 8 contain savings and transitional provisions.

SCHEDULE 1

Schedule 1 sets out the salaries and allowances of magistrates and acting magistrates.

SCHEDULE 2

Schedule 2 sets out certain proceedings which apply in relation to summary criminal hearings.

SCHEDULE 3

Schedule 3 sets out the procedures which apply in relation to alternate procedures for certain summary offences.

SCHEDULE 4

Schedule 4 sets out a number of indictable offences which may be dealt with by way of summary proceedings.

SCHEDULE 5

Schedule 5 sets out the procedures which apply in relation to committal proceedings.

SCHEDULE 6

Schedule 6 sets out the procedure which applies where there is an appeal to the County Court.

SCHEDULE 7

Schedule 7 sets out the procedure which applies in relation to the enforcement of infringement penalties.

SCHEDULE 8

Schedule 8 contains saving and transitional provisions.