



ANNO VICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1978

No. 87 of 1978

An Act to amend the Local and District Criminal Courts Act,
1926-1976.

[Assented to 30th November, 1978]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Local and District Criminal Courts Act Amendment Act, 1978". Short titles.

(2) The Local and District Criminal Courts Act, 1926-1976, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Local and District Criminal Courts Act, 1926-1978".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 4 of the principal Act is amended—

Amendment of
principal Act,
s. 4—
Interpretation.

(a) by striking out from subsection (2) the definition of "bailiff";

(b) by striking out from the definition of "local court of special jurisdiction" in subsection (2) the passage "to hear and determine unsatisfied judgment summonses in pursuance of" and inserting in lieu thereof the passage "to exercise the jurisdiction conferred on such a court by";

(c) by striking out from the definition of "small claim" in subsection (2) the passage "five hundred dollars" and inserting in lieu thereof the passage "one thousand two hundred and fifty dollars";

(d) by striking out from the definition of "the local court jurisdictional limit" in subsection (2) the passage "twenty thousand dollars" and inserting in lieu thereof the passage "thirty thousand dollars".

Amendment of
principal Act,
s. 16—
Appointment
of officers.

4. Section 16 of the principal Act is amended—

- (a) by striking out from subsection (1) the word “bailiffs,”;
- (b) by striking out subsection (2);
- and
- (c) by striking out from subsection (4) the passage “and the bailiff”.

Amendment of
principal Act,
s. 17—
Clerks to
give security.

5. Section 17 of the principal Act is amended—

- (a) by striking out the passage “and the bailiff”;
- and
- (b) by striking out the passage “their several offices” and inserting in lieu thereof the passage “his office”.

Repeal of
s. 18 of
principal Act.

6. Section 18 of the principal Act is repealed.

Amendment of
principal Act,
s. 25—
Powers and
duties of
Judge or
special
magistrate.

7. Section 25 of the principal Act is amended—

- (a) by inserting the word “and” between subparagraph (a) and subparagraph (b) of paragraph v of subsection (1);
- (b) by striking out subparagraph (c) of paragraph v of subsection (1) and the word “and” immediately preceding that paragraph;
- (c) by striking out paragraphs x and xi of subsection (1);
- and
- (d) by striking out from paragraph xii of subsection (1) the passage “or bailiff” wherever it occurs.

Amendment of
principal Act,
s. 26—
Duties of
clerk.

8. Section 26 of the principal Act is amended—

- (a) by striking out from paragraph iii of subsection (2) the passage “or warrant” wherever it occurs;
- (b) by striking out from paragraph iii of subsection (2) the passage “to the bailiff” and inserting in lieu thereof the passage “to the sheriff”;
- (c) by striking out paragraph iv of subsection (2) and inserting in lieu thereof the following paragraph:—

iv. He shall, forthwith after receiving notification from the sheriff as to the service of any process issued out of the court, enter in the record book the date of the service, or a note to the effect that the process has not been served for reasons specified in the note;

- (d) by striking out paragraph v of subsection (2);
- (e) by striking out paragraphs viii, ix, x and xi of subsection (2);
- and
- (f) by striking out paragraph xiii of subsection (2).

Repeal of
s. 27 of
principal Act.

9. Section 27 of the principal Act is repealed.

- 10. Section 31 of the principal Act is amended—**
- (a) by striking out the passage “twenty thousand dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “thirty thousand dollars”;
- and
- (b) by striking out paragraph IV.
- Amendment of principal Act, s. 31—
Jurisdiction of courts of full jurisdiction.
- 11. Section 32 of the principal Act is amended—**
- (a) by striking out the passage “two thousand five hundred dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “ten thousand dollars”;
- and
- (b) by striking out paragraph IV.
- Amendment of principal Act, s. 32—
Jurisdiction of courts of limited jurisdiction.
- 12. Section 32b of the principal Act is amended by striking out the passage “any unsatisfied judgment summons, whatever the amount of the judgment might be” and inserting in lieu thereof the passage “any proceedings relating to the execution or enforcement of a judgment of a local court of full jurisdiction or of a local court of limited jurisdiction”.**
- Amendment of principal Act, s. 32b—
Jurisdiction of special jurisdiction.
- 13. Section 40 of the principal Act is amended by striking out from subsection (2) the passage “and after such hearing the clerk shall certify the result to the said Master, and judgment in accordance with such certificate may be signed in the Supreme Court” and inserting in lieu thereof the passage “and the action shall proceed in all respects as if it had been instituted in the local court”.**
- Amendment of principal Act, s. 40—
Supreme Court may order action to be tried in a local court.
- 14. Section 44 of the principal Act is amended by striking out the passage “The Sheriff shall have no powers or duties with regard to replevin bonds and replevin, but the” and inserting in lieu thereof the word “The”.**
- Amendment of principal Act, s. 44—
Clerks of local courts to grant replevin.
- 15. Section 46 of the principal Act is amended—**
- (a) by striking out from subsection (2) the passage “three hundred dollars” and inserting in lieu thereof the passage “five hundred dollars”;
- and
- (b) by striking out from subsection (2) the passage “sixty dollars” and inserting in lieu thereof the passage “one hundred dollars”.
- Amendment of principal Act, s. 46—
Action of replevin may be commenced in Supreme Court.
- 16. Section 58 of the principal Act is amended by striking out from subsection (1) and subsection (3) the passage “five hundred dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “one thousand two hundred and fifty dollars”.**
- Amendment of principal Act, s. 58—
Appeal from local court to Full Court.

Amendment of
principal Act,
s. 98—
Mode and
effect of
appearance.

17. Section 98 of the principal Act is amended by inserting after subsection (6) the following subsection:—

(7) In proceedings under Part VIIA of this Act—

(a) a defendant desiring to appear to a plaintiff's claim shall, in lieu of filing an appearance under this section, file a defence in the form prescribed by rules of court;

and

(b) the effect of the defence, and the matters to be dealt with therein, shall be as prescribed by rules of court.

Amendment of
principal Act,
s. 107—
Judgment by
default.

18. Section 107 of the principal Act is amended by striking out from subsection (2) the passage "the rate of five dollars per centum per annum" and inserting in lieu thereof the passage "the rate prescribed by rules of court".

Repeal of
s. 114 of
principal Act
and enactment
of section in
its place—

19. Section 114 of the principal Act is repealed and the following section is enacted and inserted in its place:—

In what Court
action to be
commenced.

114. (1) Every action upon a contract, or for breach of contract, against a natural person residing in South Australia at the time the action is brought shall be commenced in the court having jurisdiction to the amount claimed nearest to the place where the defendant, or any one of the defendants being a natural person, resides.

(2) Every action, other than an action referred to in subsection (1) of this section shall be commenced in the court having jurisdiction to the amount claimed—

(a) nearest to the place where the cause of action arose;

(b) nearest to the place where the defendant, or one of the defendants, carries on business at the time the action is brought;

(c) if the action lies in contract, nearest to the place where the plaintiff, if a party to the original contract, carried on business at the time of the making of the contract, or, if he did not then carry on any business, nearest to the place where he resided at that time;

or

(d) if the action lies in contract and the plaintiff is not a party to the original contract, nearest to the place where the party in whose right the plaintiff claims carried on his business at the time of the making of the contract, or, if he did not then carry on any business, nearest to the place where that party resided at that time.

(3) The local court within any area defined by Rules of Court made pursuant to paragraph IIIa of subsection (1) of section 28 of this Act shall for the purposes of this Act be deemed to be the nearest local court to any place within that area.

(4) This section shall not apply to an action of replevin or for the recovery of premises or of ejectment.

20. Sections 115, 116, 117 and 118 of the principal Act are repealed and the following section is enacted and inserted in their place:—

Repeal of ss. 115 to 118 of principal Act and enactment of section in their place.

115. Where it appears to a local court that—

Transfer of actions.

(a) an action has been commenced in the wrong local court;

or

(b) an action could be more conveniently dealt with if it were transferred to some local court other than the local court in which it has been commenced,

the local court may, upon the application of any party to the action, or of its own motion, order that the action be transferred to a local court specified in the order.

21. Section 126 of the principal Act is amended by striking out from subsection (1) the passage “the rate of five dollars per centum per annum” and inserting in lieu thereof the passage “the rate prescribed by rules of court”.

Amendment of principal Act, s. 126—
If defendant does not appear plaintiff may recover.

22. Section 131 of the principal Act is amended by striking out from paragraph (a) the passage “that execution shall issue for”.

Amendment of principal Act, s. 131—
Court may order return of chattels.

23. Section 134 of the principal Act is repealed.

Repeal of s. 134 of principal Act.

24. Section 152a of the principal Act is amended by inserting after subsection (3) the following subsection:—

Amendment of principal Act, s. 152a—
Small claims.

(4) Proceedings based upon a small claim shall be instituted in the manner prescribed by rules of court.

25. The following section is enacted and inserted in the principal Act after section 152f thereof:—

Enactment of s. 152g of principal Act

152g. This Part does not apply to proceedings—

Transition provision.

(a) based upon a small claim for a pecuniary sum exceeding five hundred dollars;

and

(b) instituted before the commencement of the Local and District Criminal Courts Act Amendment Act, 1978.

26. Section 153 of the principal Act is amended—

Amendment of principal Act, s. 153—
Interest on judgments, etc.

(a) by striking out from paragraph (a) of subsection (1) the passage “in the manner hereinafter set out” and inserting in lieu thereof the passage “in accordance with the Enforcement of Judgments Act, 1978”;

and

(b) by striking out from paragraph (b) of subsection (1) the passage “the rate of five dollars per centum per annum” and inserting in lieu thereof the passage “the rate prescribed by rules of court”.

Repeal of
ss. 154 to 174h
of principal
Act.

27. Sections 154 to 174h (inclusive) of the principal Act are repealed and the following section is enacted and inserted in their place:—

Transfer of
judgments.

154. (1) The clerk of a local court may, upon the application of a person entitled to the benefit of a judgment or order given by, or registered in, that local court transfer the judgment or order for registration in some other local court.

(2) The transfer shall be effected by memorandum in writing addressed to the clerk of the local court to which it is desired to transfer the judgment or order accompanied by a copy of the judgment or order and such other documents as may be relevant to the proceedings in which it was given.

(3) Upon receipt of a memorandum transferring a judgment or order under this section, the clerk of a local court shall register the judgment or order in the court and thereafter proceedings may be taken upon and in relation to the judgment or order as if it were a judgment or order of that local court.

Repeal of
ss. 175 to 195
of principal
Act.

28. Sections 175 to 195 (inclusive) of the principal Act are repealed.

Repeal of
ss. 197 to 207
of principal
Act.

29. Sections 197 to 207 (inclusive) of the principal Act are repealed and the following section is enacted and inserted in their place:—

Relief by way
of interpleader.

197. (1) Where a person is in possession of property, or proceeds of the sale of property, and he has been, or expects to be, sued in respect of that property, or those proceeds, by two or more persons making adverse claims thereto, he may, subject to this section and the rules of court, apply to a local court for relief by way of interpleader.

(2) An application may be made under this section—

(a) where the value of the property, or the amount of the proceeds of sale of the property does not exceed thirty thousand dollars—to a local court of full jurisdiction;

and

(b) where the value of the property, or the amount of the proceeds of sale of the property, does not exceed ten thousand dollars—to a local court of limited jurisdiction.

(3) A court may grant relief by way of interpleader upon such terms as may be just.

Amendment of
principal Act,
s. 216—
Proceedings for
recovery of
premises.

30. Section 216 of the principal Act is amended by striking out from subsection (1) the passage “three thousand one hundred and eighty dollars” and inserting in lieu thereof the passage “five thousand dollars”.

31. Section 223 of the principal Act is amended by striking out subsections (2), (2a) and (3) and inserting in lieu thereof the following subsection:—
- Amendment of principal Act, s. 223—
Effect of execution of order.
- (2) Upon the execution of an order for possession made under this Part, the plaintiff shall hold the premises discharged from the tenancy and the defendant and all persons claiming by, through or under him shall be barred from relief.
32. Sections 224, 225 and 226 of the principal Act are repealed.
- Repeal of ss. 224, 225 and 226 of principal Act.
33. Section 228 of the principal Act is amended—
- Amendment of principal Act, s. 228—
Proceedings where rent in arrear.
- (a) by striking out from subsection (1) the passage “three thousand one hundred and eighty dollars” and inserting in lieu thereof the passage “five thousand dollars”;
- and
- (b) by striking out subsection (8).
34. Section 230 of the principal Act is amended by striking out from subsection (1) and subsection (3) the passage “twenty thousand dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “thirty thousand dollars”.
- Amendment of principal Act, s. 230—
Proceedings on ejection.
35. Section 243 of the principal Act is repealed.
- Repeal of s. 243 of principal Act.
36. Section 259 of the principal Act is amended—
- Amendment of principal Act, s. 259—
Special equitable jurisdiction of local court.
- (a) by striking out the passage “twenty thousand dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “thirty thousand dollars”;
- and
- (b) by striking out the passage “three thousand one hundred and eighty dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “five thousand dollars”.
37. Section 273 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—
- Amendment of principal Act, s. 273—
Form and currency of warrants.
- (1) The warrant shall be addressed to the sheriff.
38. Section 274 of the principal Act is amended by striking out the passage “bailiff or person executing the warrant” and inserting in lieu thereof the word “sheriff”.
- Amendment of principal Act, s. 274—
Endorsement of certificate.
39. Section 275 of the principal Act is amended—
- Amendment of principal Act, s. 275—
Duty of Sheriff.
- (a) by striking out from subsection (1) the passage “bailiff or other person executing the warrant” and inserting in lieu thereof the word “sheriff”;
- and
- (b) by striking out from paragraph (b) of subsection (1) the word “bailiff” and inserting in lieu thereof the word “sheriff”.

Amendment of
principal Act,
s. 294—
Court fees.

40. Section 294 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsections:—

(1) Subject to this section, the fees specified in the third schedule shall be paid in respect of the matters referred to in that schedule.

(1a) The fees payable in respect of proceedings under Part VIIA of this Act shall be fixed by rules of court.

Amendment of
principal Act,
s. 297—
Punishment for
forging
signature, etc.,
of officer of
court.

41. Section 297 of the principal Act is amended by striking out from paragraph (a) the word “, bailiff,”.

Repeal of
s. 301 of
principal Act.

42. Section 301 of the principal Act is repealed.

Amendment of
principal Act,
s. 302—
Remedy
against
extortion or
misconduct.

43. Section 302 of the principal Act is amended—

(a) by striking out the passage “, or bailiff,”;

and

(b) by striking out from paragraph (c) the word “, bailiff,”.

Amendment of
principal Act,
s. 303—
Penalty for
taking fees
besides those
allowed.

44. Section 303 of the principal Act is amended by striking out the passage “, bailiff,”.

Repeal of
s. 304 of
principal Act.

45. Section 304 of the principal Act is repealed.

Repeal of
s. 308 of
principal Act.

46. Section 308 of the principal Act is repealed.

Repeal of
s. 311 of
principal Act.

47. Section 311 of the principal Act is repealed.

Repeal of
s. 312 of
principal Act.

48. Section 312 of the principal Act is repealed.

Repeal of
fourth schedule
of the
principal Act.

49. The fourth schedule to the principal Act is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor