

SOUTH AUSTRALIA

**MAGISTRATES COURT ACT 1991**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 March 1998.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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Magistrates Court Act 1991 No. 73 of 1991  
[Assented to 12 December 1991]<sup>1</sup>

as amended by

Statutes Amendment (Courts) Act 1993 No. 62 of 1993 [Assented to 27 May 1993]<sup>2</sup>

Statutes Amendment (Courts) Act 1994 No. 43 of 1994 [Assented to 2 June 1994]<sup>3</sup>

Second-hand Vehicle Dealers Act 1995 No. 9 of 1995 [Assented to 16 March 1995]<sup>4</sup>

Retail Shop Leases Act 1995 No. 14 of 1995 [Assented to 6 April 1995]<sup>5</sup>

Statutes Amendment (Recording of Interviews) Act 1995 No. 65 of 1995 [Assented to 10 August 1995]<sup>6</sup>

Statutes Amendment (Courts) Act 1995 No. 84 of 1995 [Assented to 30 November 1995]<sup>7</sup>

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]<sup>8</sup>

Building Work Contractors Act 1995 No. 87 of 1995 [Assented to 7 December 1995]<sup>9</sup>

Statutes Amendment (Mediation, Arbitration and Referral) Act 1996 No. 46 of 1996 [Assented to 27 June 1996]<sup>10</sup>

**Second-hand Dealers and Pawnbrokers Act 1996 No. 101 of 1996 [Assented to 19 December 1996]<sup>11</sup>**

<sup>1</sup> Came into operation (except s. 14(2)) 6 July 1992: *Gaz.* 2 July 1992, p. 209; s. 14(2) will not be brought into operation (s. 14(2) was subsequently repealed by Act No. 62 of 1993, s. 11).

<sup>2</sup> Came into operation (except s. 14) 1 July 1993: *Gaz.* 24 June 1993, p. 2047; s. 14 came into operation 28 October 1993: *Gaz.* 27 October 1993, p. 1892.

<sup>3</sup> Came into operation 9 June 1994: *Gaz.* 9 June 1994, p. 1669.

<sup>4</sup> Sched. 5 came into operation 30 June 1995: *Gaz.* 29 June 1995, p. 2977.

<sup>5</sup> Came into operation 30 June 1995: *Gaz.* 29 June 1995, p. 2976.

<sup>6</sup> Clauses 2-4 of Sched. came into operation 21 December 1995: *Gaz.* 21 December 1995, p. 1760.

<sup>7</sup> Came into operation 21 December 1995: *Gaz.* 21 December 1995, p. 1759.

<sup>8</sup> Came into operation 14 December 1995: *Gaz.* 14 December 1995, p. 1641.

<sup>9</sup> Came into operation 1 June 1996: *Gaz.* 23 May 1996, p. 2536.

<sup>10</sup> Came into operation 30 September 1996: *Gaz.* 29 August 1996, p. 808.

<sup>11</sup> **Came into operation 1 March 1998: *Gaz.* 19 February 1998, p. 932.**

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

**An Act to establish the Magistrates Court of South Australia; to define its jurisdiction and powers; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Magistrates Court Act 1991*.

**Commencement**

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

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

"**Chief Magistrate**" means the person holding or acting in the office of Chief Magistrate under the *Magistrates Act 1983*;

"**civil action**" means an action or proceeding brought in a civil division of the Court;

"**Court**" or "**Magistrates Court**" means the Magistrates Court of South Australia;

"**criminal action**" means an action or proceeding brought in the criminal division of the Court;

"**evidentiary material**" means any document, object or substance of evidentiary value in proceedings before the Court and includes any document, object or substance that should, in the opinion of the Court, be produced for the purpose of enabling the Court to determine whether or not it has evidentiary value;

"**judgment**" means a judgment, order or decision and includes an interlocutory judgment or order;

"**judicial office**" means the office of Magistrate, Special Justice or Justice;

"**Magistrate**" means a person holding office as a Magistrate under the *Magistrates Act 1983*;

"**minor civil action**"—*See subsection (2)*;

"**minor statutory proceeding**" means—

- (a) an application under the *Fences Act 1975*; or
- (b) an application under Part 4 of the *Second-hand Vehicle Dealers Act 1995*; or
- (ba) an application under the *Retail Shop Leases Act 1995*, other than an application that involves a monetary claim for more than \$10 000; or
- (bb) an application under section 11(8) of the *Second-hand Dealers and Pawnbrokers Act 1996*; or
- (bc) an application under Part 5 of the *Building Work Contractors Act 1995*; or
- (c) any other proceeding declared by statute to be a minor statutory proceeding;

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"**neighbourhood dispute**" means a dispute between neighbours, or the occupiers of properties in close proximity, based on allegations of trespass or nuisance;

"**Registrar**" means the Principal Registrar, or any Registrar or Deputy Registrar of the Court;

"**rules**" means the rules of the Court in force under this Act;

"**small claim**" means a monetary claim for \$5 000 or less.

(2) Subject to subsections (3) and (4), a minor civil action is an action founded on—

- (a) a small claim; or
- (b) a claim for relief in relation to a neighbourhood dispute; or
- (c) a minor statutory proceeding.

(3) If a claim that is not within one of the classes referred to in subsection (2) is introduced into a minor civil action, the action ceases to be a minor civil action unless the Court orders that the subsequent claim be tried separately.

(4) If a neighbourhood dispute or a minor statutory proceeding involves—

- (a) a monetary claim for more than \$5 000; or
- (b) a claim for relief in the nature of an order to carry out work where the value of the work is more than \$5 000,

a party may elect, in accordance with the rules, to exclude the dispute or proceeding from the rules governing minor civil actions<sup>1</sup>, and in that case, the dispute or proceeding ceases to be a minor civil action.

<sup>1</sup> See Division 2 of Part 5.

(5) Proceedings for a contempt of the Court will be regarded as a civil action or a criminal action according to whether the contempt relates to proceedings in a civil division or the criminal division of the Court and where the contempt is unrelated to proceedings in the Court, the proceedings for contempt will be regarded as a criminal action.

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.*

**PART 2**  
**MAGISTRATES COURT OF SOUTH AUSTRALIA**

**DIVISION 1—ESTABLISHMENT OF COURT**

**Establishment of Court**

4. The Magistrates Court of South Australia is established.

**Court of record**

5. The Court is a Court of record.

**Seal**

6. (1) The Court will have such seals as are necessary for the transaction of its business.

(2) A document apparently sealed with a seal of the Court will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Court.

**DIVISION 2—STRUCTURE AND CONSTITUTION OF COURT**

**Divisions of Court**

7. (1) The Court is divided into the following Divisions—

- (a) the Civil (General Claims) Division;
- (b) the Civil (Consumer and Business) Division;
- (c) the Civil (Minor Claims) Division;
- (d) the Criminal Division.

(2) The Court is, in its Criminal Division, a court of summary jurisdiction.

**Constitution of Court**

7A. (1) Subject to this section, the Court, when sitting to adjudicate on any matter, must be constituted of a Magistrate.

(2) If there is no Magistrate available to constitute the Court, the Court may be constituted of two Justices or a Special Justice.

(3) The Court may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

**Assessors**

7B. If under an Act conferring a jurisdiction on the Court in its Civil (Consumer and Business) Division the Court is to sit with assessors in exercising that jurisdiction, then the following provisions apply:

- (a) the Court will (except for the purpose of dealing with interlocutory, procedural or administrative matters) sit with assessors selected in accordance with the Act conferring the jurisdiction;
- (b) where the Court sits with assessors—
  - (i) questions of law or procedure will be determined by the judicial officer presiding at the proceedings; and

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- (ii) other questions will be determined by majority opinion.

**DIVISION 3—JURISDICTION OF COURT**

**Civil jurisdiction**

**8.** (1) The Court has jurisdiction—

- (a) to hear and determine an action (at law or in equity) for a sum of money where the amount claimed does not exceed—
- (i) if the claim is for damages or compensation for injury, damage or loss caused by, or arising out of, the use of a motor vehicle—\$60 000;
- (ii) in any other case—\$30 000;
- (b) to hear and determine an action (at law or in equity) to obtain or recover title to, or possession of, real or personal property where the value of the property does not exceed \$60 000;
- (c) to hear and determine an interpleader action where the value of the property to which the action relates does not exceed \$60 000;
- (d) to grant any form of relief necessary to resolve a minor civil action.

(2) The parties to an action may waive any monetary limit on the civil jurisdiction of the Court, and, in that event, the Court will have jurisdiction to determine, the action without regard to that limitation.

**Criminal jurisdiction**

**9.** Subject to the *Summary Procedure Act 1921* the Court has jurisdiction—

- (a) to conduct a preliminary examination of a charge of an indictable offence;
- (b) to hear and determine a charge of a minor indictable offence;
- (c) to hear and determine a charge of a summary offence.

**Statutory jurisdiction**

**10.** (1) The Court has any jurisdiction conferred on it by statute.

(1a) The Court, in its Civil (Consumer and Business) Division, has—

- (a) jurisdiction to hear and determine an application under Part 4 or Schedule 3 of the *Second-hand Vehicle Dealers Act 1995*; and
- (ab) jurisdiction to hear and determine an application under the *Retail Shop Leases Act 1995*; and
- (b) jurisdiction to hear and determine an application under Part 5 of the *Building Work Contractors Act 1995*; and
- (c) any other jurisdiction conferred on that Division by statute.

(1b) Nothing prevents the Court, in its Civil (Consumer and Business) Division (whether constituted of a judicial officer or officers or sitting with assessors), from exercising civil jurisdiction other than that referred to in subsection (1a) in order to promote the convenient disposal of proceedings by the hearing together of different causes of action or claims.

(2) The rules may assign a particular statutory jurisdiction (other than a statutory jurisdiction specifically assigned by or under another Act to a particular Division of the Court) either to the Civil (General Claims) Division, or to the Criminal Division, of the Court.

**Minor civil actions**

**10A.** The jurisdiction of the Court to hear and determine minor civil actions is to be exercised—

- (a) subject to paragraph (b), by the Civil (Minor Claims) Division;
- (b) in the case of minor civil actions falling within a statutory jurisdiction specifically assigned to the Civil (Consumer and Business) Division, by that Division.

**Power to continue hearing as another Division**

**10B.** If proceedings commenced in one Division of the Court should have been commenced in another Division, the Court may, if it thinks fit, continue to hear and determine the proceedings as if it were sitting as that other Division and as if the proceedings had been commenced in that other Division.

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**PART 3  
ADMINISTRATION OF COURT**

**DIVISION 1—CHIEF MAGISTRATE**

**Chief Magistrate**

**11.** (1) The Chief Magistrate is the principal judicial officer of the Court.

(2) The Chief Magistrate is responsible for the administration of the Court.

(3) In the absence of the Chief Magistrate from official duties, responsibility for administration of the Court devolves on the Deputy Chief Magistrate and, if both are absent, on a Magistrate appointed by the Governor to act in the absence of the Chief Magistrate.

**DIVISION 2—THE COURT’S ADMINISTRATIVE AND ANCILLARY STAFF**

**Administrative and ancillary staff**

**12.** (1) The Court’s administrative and ancillary staff consists of—

(a) the Principal Registrar;

(b) the Registrars;

(c) the Deputy Registrars;

(d) the Magistrates’ clerks;

(e) the Listing Co-ordinator;

(f) any other persons appointed to the non-judicial staff of the Court.

(2) The Court’s administrative and ancillary staff will be appointed under the *Courts Administration Act 1993*.

**Principal Registrar**

**13.** (1) The Principal Registrar is the Court’s chief administrative officer.

(2) A person cannot be appointed to the office of Principal Registrar, nor can a person holding that office be dismissed or reduced in status, except on the recommendation, or with the concurrence, of the Chief Magistrate.

**Responsibilities of non-judicial staff**

**14.** (1) A member of the Court’s administrative or ancillary staff is responsible to the Chief Magistrate (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

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**DIVISION 3—SITTINGS AND DISTRIBUTION OF BUSINESS**

**Exercise of procedural and administrative powers of Court**

**15.** A Registrar or Justice may—

(a) issue summonses and warrants on behalf of the Court;

- (b) adjourn proceedings before the Court;
- (c) exercise any procedural or non-judicial powers of the Court assigned by the rules.

**Time and place of sittings**

- 16.** (1) The Court may sit at any time (including a Sunday).
- (2) The Court may sit at any place (either within or outside the State).
  - (3) The Court will sit at such times and places as the Chief Magistrate may direct.
  - (4) Registries of the Court will be maintained at such places as the Governor may determine.

**Adjournment from time to time and place to place**

- 17.** The Court may—
- (a) adjourn proceedings from time to time and from place to place; or
  - (b) adjourn proceedings to a time and place to be fixed; or
  - (c) order the transfer of proceedings from place to place.

**Sittings in open court**

**18.** Except where an Act or the rules otherwise provide, the Court's proceedings must be open to the public.

**Transfer of proceedings between courts**

- 19.** (1) The District Court may order—
- (a) that civil proceedings commenced in the Magistrates Court be transferred to the District Court; or
  - (b) that civil proceedings commenced in the District Court (but which lie within the jurisdiction of the Magistrates Court) be transferred to the Magistrates Court.
- (2) A Magistrate may order that civil proceedings commenced in the Magistrates Court be transferred to the District Court.
- (2a) If civil or criminal proceedings in the Supreme Court lie within the jurisdiction of the Magistrates Court, and would, in the opinion of the Supreme Court, be more conveniently or appropriately heard and determined by the Magistrates Court, the Supreme Court may order the transfer of the proceedings accordingly.
- (3) Where proceedings have been transferred under this section, they may be continued and completed as if steps taken in the proceedings prior to the transfer had been taken in the court to which they are transferred.

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**PART 4  
EVIDENTIARY POWERS**

**Power to require attendance of witnesses and production of evidentiary material**

**20.** (1) The Court may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Court at a specified time and place to give evidence or to produce evidentiary material (or both).

(2) A summons to produce evidentiary material may, instead of providing for production of the material before the Court, provide for production of the material to an officer of the Court nominated in the summons.

(3) If—

(a) a person fails to comply with a summons under subsection (1); or

(b) there are grounds for believing that, if such a summons were issued, a person would not comply with it,

the Court may issue a warrant to have the person arrested and brought before the Court.

**Power of Court to compel the giving of evidence**

**21.** (1) A person who is called to give evidence or to produce evidentiary material before a Court and—

(a) refuses or fails to make an oath or affirmation when required to do so by the Court;

(b) refuses or fails to give evidence on a subject on which that person is compellable to give evidence;

(c) refuses or fails without reasonable excuse to produce evidentiary material that that person is required by the Court to produce,

commits a contempt of the Court.

(2) This section applies whether the person was summoned before the Court, brought before the Court on a warrant, or came to the Court of his or her own volition.

**Entry and inspection of property**

**22.** (1) The Court may enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(2) The Court may authorise an officer of the Court to enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(3) A person who obstructs the Court, or a person authorised by a Court, in the exercise of a power of entry or inspection under this section commits a contempt of the Court.

**Production of persons held in custody**

**23.** If the Court requires the attendance before it of any person who is held in custody in the State, the Court may—

(a) issue a summons or a notice requiring the custodian to produce that person before the Court at a nominated time and place; or

- (b) issue a warrant authorising the sheriff, or a member of the police force, to take the person from the custodian and bring him or her before the Court.

**Issue of evidentiary summonses**

**24.** A summons or a notice under this Part may be issued on behalf of the Court by—

- (a) a Magistrate; or
- (b) a Justice; or
- (c) a Registrar; or
- (d) any other officer authorised by the rules to issue such summonses.

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**PART 5  
SPECIAL PROVISIONS AS TO COURT'S CIVIL JURISDICTION**

**DIVISION 1—GENERAL**

**Interim injunctions, etc.**

**25.** The Court may, on such terms as appear just, grant an injunction or make any other order that may be necessary to preserve the subject-matter of an action intact until the questions arising in the action have been finally determined.

**Restraining orders**

**26.** (1) A Court may make an order (a "restraining order") preventing or restricting dealing with property of a defendant to an action if—

- (a) the action appears to have been brought on reasonable grounds; and
- (b) the property may be required to satisfy a judgment that has been, or may be, given in the action; and
- (c) there is a substantial risk that the defendant will dispose of the property before judgment is given, or before it can be enforced.

(2) A restraining order must be served as directed by the Court.

(3) A person who deals with property subject to a restraining order except as permitted by the order commits a contempt of Court.

(4) The Court may vary or revoke a restraining order at any time.

(5) If it appears to the Court that grounds for making a restraining order exist but the Court requires further evidence to identify property in relation to which the order could be effectively made, the Court may summons the defendant, or issue a warrant to have the defendant arrested and brought before the Court, for examination on that subject.

**Mediation and conciliation**

**27.** (1) Subject to and in accordance with the rules, the Court constituted of a Magistrate (whether sitting with assessors or not) may, with or without the consent of the parties, and any other judicial officer or a Registrar may, with the consent of the parties, appoint a mediator and refer an action or any issues arising in an action for mediation by the mediator.

(2) A mediator appointed under this section has the privileges and immunities of a Magistrate and such of the powers of the Court as the Court may delegate.

(2a) A mediator appointed under this section must not, except as required or authorised to do so by law, disclose to another person any information obtained in the course or for the purposes of the mediation.

(2b) The Court may itself endeavour to achieve a negotiated settlement of an action or resolution of any issues arising in an action.

(2c) A Magistrate or other judicial officer who attempts to settle an action or to resolve any issues arising in an action is not disqualified from taking further part in those proceedings but will be so disqualified if he or she is appointed as a mediator in relation to those proceedings.

(3) Evidence of anything said or done in an attempt to settle an action by mediation under this section is not subsequently admissible in the proceedings or in related proceedings.

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(5) Where a case is settled under this section, the terms of the settlement may be embodied in a judgment.

**Trial of issues by arbitrator**

**28.** (1) The Court may refer an action or any issues arising in an action for trial by an arbitrator.

(2) The arbitrator may be appointed either by the parties to the action or by the Court.

(3) The arbitrator becomes for the purposes of the reference an officer of the Court and may exercise such of the powers of the Court as the Court delegates to the arbitrator.

(4) The Court will, unless good reason is shown to the contrary, adopt the award of the arbitrator as its judgment on the action or issues referred.

(5) The costs of the arbitrator will be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

**Expert reports**

**29.** (1) The Court may refer any question arising in an action for investigation and report by an expert in the relevant field.

(2) A person to whom a question is referred under this section becomes for the purposes of the investigation an officer of the Court and may exercise such of the powers of the Court as the Court delegates.

(3) The Court may adopt a report obtained under this section in whole or part.

(4) The costs of the expert's investigation and report will be borne, in the first instance, equally by the parties or in such other proportions as the Court may direct, but the Court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

**Law and equity**

**30.** (1) Legal and equitable claims and defences may be included (without discrimination between them) in the same action.

(2) If there is a conflict between the rules of common law and equity as they apply to a particular action, the rules of equity prevail.

**Alternative forms of relief**

**31.** (1) Although a particular form of relief is sought by a party to an action, the Court may grant any other form of relief that it considers more appropriate to the circumstances of the case.

(2) In particular—

(a) where a party seeks relief by way of injunction or specific performance, the Court may award damages in addition to or in substitution for such relief;

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- (b) where a party seeks foreclosure of the equity of redemption in mortgaged property, the Court may, instead of ordering foreclosure—
  - (i) direct the sale of the mortgaged property; or
  - (ii) direct a transfer of the mortgage debt and security to a person who agrees to assume the debt.

(This subsection is not exhaustive.)

**Declaratory judgments**

**32.** The Court may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

**Interim awards of damages**

**33.** (1) In an action for damages, the Court may give a declaratory judgment finally determining the question of liability between the parties, but leaving the quantum of damages to be determined subsequently.

(2) The Court may, at the time of giving declaratory judgment or subsequently, order the defendant—

- (a) to make such interim payments as the Court thinks fit on account of the damages that are yet to be finally assessed (but such payments should not include any allowance for non-economic loss unless the Court is satisfied that there is good reason for including such an allowance);
- (b) to give such security as the Court thinks fit for the payment of damages yet to be assessed.

(3) If—

- (a) declaratory judgment is given in a case of personal injury; and
- (b) the injured person is incapacitated (wholly or partially) for employment; and
- (c) it appears to the Court that the injured person is not making adequate efforts towards rehabilitation for employment,

a component of an interim payment attributable to loss of earnings must not exceed 75% of the loss of earnings over the period to which the interim payment relates.

(4) A party to an action in which declaratory judgment has been given may at any time apply to the Court for a final assessment of damages.

(5) If an application is made under subsection (4) and—

- (a) the action arises from personal injury and the medical condition of the injured person appears to have stabilised; or
- (b) four years or more have elapsed since the date of the declaratory judgment,

the application should not be refused except in exceptional circumstances.

(6) If a party in whose favour a declaratory judgment has been given dies before the final assessment of damages—

- (a) the administrator of the deceased's estate may continue the action for the benefit of the estate (in which case the deceased's damages will be finally assessed to the date of death and further allowance may be made for damages allowable under the *Survival of Causes of Action Act 1940*); or
- (b) if the deceased's death was caused or accelerated by the circumstances out of which the action arose—the administrator may convert the action into one on behalf of dependants under the *Wrongs Act 1936*.

(7) If the administrator converts the action into one on behalf of dependants, the Court will, in assessing damages on behalf of the dependants, make a proper allowance for damages paid to the deceased.

### **Pre-judgment interest**

**34.** (1) Unless good reason is shown to the contrary, the Court will, on the application of a party in whose favour a monetary judgment has been, or is to be, given include in the judgment an award of interest in accordance with this section.

(2) The interest—

- (a) will be calculated at a rate fixed by the Court; and
- (b) will be calculated in respect of a period fixed by the Court (which must, however, in the case of a judgment given on a liquidated claim, be the period running from when the liability to pay the amount of the claim fell due to the date of judgment unless the Court otherwise determines); and
- (c) is, in accordance with the Court's determination, payable in respect of the whole or part of the amount for which judgment is given.

(3) The Court may, without proceeding to calculate interest under subsection (2), award a lump sum instead of interest.

(4) This section does not—

- (a) authorise the award of interest on interest;
- (b) authorise the award of interest on exemplary or punitive damages;
- (c) affect damages for dishonour of a negotiable instrument;
- (d) authorise the award of interest (except by consent) on a sum for which judgment is given by consent;
- (e) limit or affect the operation of any other enactment or rule of law dealing with interest.

### **Interest on judgment debts**

**35.** (1) A judgment debt bears interest at a rate prescribed by the rules.

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- (2) Subject to any direction by the Court to the contrary, the interest runs—
- (a) in the case of taxed costs—from the date the costs are taxed or an earlier date fixed by the taxing officer;
  - (b) in the case of any other monetary sum—from the date of the judgment.

**Payment to child**

**36.** (1) Although a party to an action is a child, a Court may order the payment of money to that party.

(2) Where such an order is made, a receipt given by the child is a valid discharge for the person to whom it is given.

**Costs**

**37.** (1) Subject to this Act and the rules, costs in any civil proceedings will be in the discretion of the Court.

(2) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may, at the conclusion of those proceedings—

- (a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);
- (b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;
- (c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

(3) The Court may not make an order against a legal practitioner under subsection (2) unless the Court has informed the practitioner of the nature of the order proposed and allowed the practitioner a reasonable opportunity to make representations, and call evidence, in relation to the matter.

(4) If a person who is summoned to appear as a witness in any proceedings fails, without reasonable excuse, to appear in obedience to the summons, the Court may order that person—

- (a) to indemnify the parties to the proceedings for costs resulting from failure to obey the summons;
- (b) to pay to the Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the witness's failure to obey the summons.

**DIVISION 2—MINOR CIVIL ACTIONS**

**Minor civil actions**

**38.** (1) The following provisions are applicable to the trial of a minor civil action:

- (a) the trial will take the form of an inquiry by the Court into the matters in dispute between the parties rather than an adversarial contest between the parties;

- (b) the Court will itself elicit by inquiry from the parties and the witnesses, and by examination of evidentiary material produced to the Court, the issues in dispute and the facts necessary to decide those issues;
- (c) the Court may itself call and examine witnesses;
- (d) the parties are not bound by written pleadings;
- (e) the Court is not bound by the rules of evidence;
- (f) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) At or before the trial of a minor civil action, the Court should explore any possible avenues of achieving a negotiated settlement of the matters in dispute.

(3) After giving judgment in a minor civil action, the Court—

- (a) should advise the unsuccessful party of his or her right to apply for review of the proceedings by the District Court; and
- (b) should give the successful party any advice or assistance as to the enforcement of the judgment that the Court considers appropriate in the circumstances; and
- (c) if there is a judgment debtor who is present, should proceed immediately to investigate his or her means of satisfying the judgment and to take any further action that appears appropriate in view of the results of that investigation.

(4) The following provisions govern representation in minor civil actions:

- (a) representation of a party by a legal practitioner will not be permitted unless—
  - (i) another party to the action is a legal practitioner; or
  - (ii) all parties to the action agree; or
  - (iii) the Court is of the opinion that the party would be unfairly disadvantaged if not represented by a legal practitioner;
- (b) if a party to the action is a body corporate, the Court must, if the party seeks to be represented by an officer or employee who is not a legal practitioner, permit such representation;
- (c) if a person is subrogated to the rights of a party, the Court will permit that person to appear in the proceedings on behalf of that party and to be represented in the same way as if that person were a party;
- (d) the Court will permit a party, or a person subrogated to the rights of a party, to be assisted by a person who is not a legal practitioner but only if that person is not acting for fee or reward.

(5) In a minor civil action costs for getting up the case for trial, or by way of counsel fees, will not be awarded unless all parties were represented by counsel, or the Court is of opinion that there are special circumstances justifying the award of such costs.

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(6) The District Court (constituted of a single Judge) may, on the application of a party dissatisfied with a judgment given in a minor civil action, review the proceedings and, if it appears just to do so, set aside the judgment and give any judgment that should, in the opinion of the District Court, have been given in the first instance.

(It is intended that the District Court should give a final judgment on the review and should not send the matter back to the Magistrates Court for further hearing or for re-hearing.)

(7) On a review, the District Court—

(a) may inform itself as it thinks fit on the subject-matter of the appeal and, in doing so, is not bound by the rules of evidence; and

(b) may, if it thinks fit, re-hear evidence taken before the Magistrates Court.

(8) In hearing and determining an application for review, the District Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

**Determination in minor civil action creates no issue estoppel**

**39.** A determination of an issue in a minor civil action does not prevent the parties from again litigating the same issue in different proceedings based on a different claim.

**PART 6**  
**APPEALS AND RESERVATION OF QUESTIONS OF LAW**

**DIVISION 1—APPEALS FROM CIVIL DIVISION OF COURT**

**Right of appeal**

**40.** (1) A party to a civil action (except a minor civil action) may, in accordance with the rules of the Supreme Court, appeal against any judgment given in the action.

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(2) If the rules of the Supreme Court provide that an appeal from a judgment of a particular class can only be brought by leave of that Court, the right of appeal is limited accordingly, but in any other case an appeal lies as of right.

(3) The appeal lies to the Supreme Court constituted of a single Judge but the Judge may (if he or she thinks fit) refer the appeal for hearing and determination by the Full Court.

(4) If jurisdiction to try the civil action is created by statute and the terms of the statute are such as to indicate that Parliament did not intend that there should be an appeal from a decision made in the exercise of that jurisdiction, that intention prevails.

(5) A right of appeal conferred by this section extends to a legal practitioner or witness against whom an order for costs is made.

**Reservation of questions of law**

**41.** (1) The Court may reserve any question of law arising in a civil action (except a minor civil action) for determination by the Supreme Court.

(2) Where a question of law is reserved for determination by the Supreme Court, that Court may determine the question and give any consequential orders or directions appropriate to the circumstances of the case.

**DIVISION 2—APPEALS FROM CRIMINAL DIVISION OF COURT**

**Appeals**

**42.** (1) A party to a criminal action may, subject to this section and in accordance with the rules of the appellate court, appeal against any judgment given in the action (including a judgment dismissing a charge of a summary or minor indictable offence but not any judgment arising from a preliminary examination).

(1a) An appeal does not, however, lie against an interlocutory judgment given in summary proceedings.

(2) The appeal lies—

(a) in the case of an action relating to an offence categorised under the *Summary Procedure Act 1921* as an industrial offence—to the Industrial Court; or

(b) in any other case, to the Supreme Court.

(3) If an appeal to the Supreme Court arises from proceedings related to a minor indictable offence, the appeal will be to the Full Court unless the appellant elects to have it heard by a single Judge, but, even though such an election is made, a Judge may refer the appeal to the Full Court.

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(4) On an appeal, the appellate court may, if the interests of justice so require, re-hear any witnesses or receive fresh evidence.

(5) On the hearing of the appeal, the appellate court may exercise any one or more of the following powers:

- (a) it may confirm, vary or quash the judgment subject to the appeal and, if the Court thinks the interests of justice so require, it may vary or quash any other judgment given in the same or related proceedings;
- (b) it may remit the case for hearing or further hearing before the Magistrates Court;
- (c) it may make any other order (including an order for costs) that may be necessary or desirable in the circumstances.

(6) Where a judgment or order has been confirmed, varied or made on appeal under this section, the Magistrates Court has the same authority to enforce that judgment or order as if it had not been appealed against or had been made in the first instance.

**Cases stated**

**43.** (1) The Court may reserve any question of law arising in a criminal action (except a preliminary examination of a charge of an indictable offence) for determination by a superior court.

(2) The question will be reserved—

- (a) if the question arises in proceedings related to an offence categorised under the *Summary Procedure Act 1921* as an industrial offence—for determination by the Industrial Court;
- (b) in any other case—for determination by the Supreme Court (and if the question arises from proceedings related to a minor indictable offence, the question will be determined by the Full Court unless the parties agree to refer it to a single Judge).

(3) The Court for whose determination a question of law is reserved under this section may determine the question and give any consequential orders or directions that may be appropriate in the circumstances of the case.

**PART 7  
MISCELLANEOUS**

**Immunities**

**44.** (1) A Magistrate or other person exercising the jurisdiction of the Court has the same privileges and immunities from civil liability as a Judge of the Supreme Court.

(2) A non-judicial officer of the Court incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

**Contempt in face of Court**

**45.** A person who—

- (a) interrupts the proceedings of the Court or misbehaves before the Court;
- (b) insults a Magistrate, Registrar or other officer of the Court who is acting in the exercise of official functions;
- (c) refuses, in the face of the Court, to obey a lawful direction of the Court,

is guilty of a contempt of the Court.

**Punishment of contempts**

**46.** The Court may punish a contempt as follows:

- (a) it may impose a fine (not exceeding a Division 5 fine); or
- (b) it may commit to prison for a specified term (not exceeding Division 5 imprisonment) or until the contempt is purged.

**Custody of litigant's funds and securities**

**47.** (1) The Registrar is responsible for the proper custody of money paid into the Court and securities delivered to the Court in connection with proceedings in the Court.

(2) The Treasurer guarantees the safe keeping of any such money or security from the time it comes into the Court's custody until it lawfully ceases to be in that custody.

(3) Any liability arising under the guarantee will be satisfied from the General Revenue of the State (which is appropriated to the necessary extent).

(4) Money paid into the Court may be invested in a manner authorised by the rules and any interest or accretions arising from the investment will be dealt with as prescribed by the rules.

(5) Any money in the Court's custody that has remained unclaimed for six years or more may be dealt with under the *Unclaimed Moneys Act 1891*.

**Miscellaneous provisions relating to legal process**

**48.** (1) Any process of the Court may be issued, served or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

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**Service**

**48A.** (1) If it is not practicable to serve any process, notice or other document relating to civil or criminal proceedings in the manner otherwise prescribed or contemplated by law, the Court may, by order—

- (a) provide for service by post; or
- (b) make any other provision that may be necessary or desirable for service.

(2) Any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.

**Rules of Court**

**49.** (1) Rules of the Court may be made—

- (a) regulating the business of the Court and the duties of the various officers of the Court; and
- (b) regulating the custody and use of the Court's seals; and
- (c) regulating the practice and procedure of the Court; and
- (ca) imposing mutual obligations on parties to proceedings in the Court to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial; and
- (cb) regulating the referral of an action or issues arising in an action to mediation or arbitration, the conduct of mediations or arbitrations or the referral of questions for investigation and report by an expert; and
- (d) regulating the form in which evidence is taken or received by the Court; and
- (e) regulating costs; and
- (f) dealing with any other matter necessary or expedient for the effective and efficient operation of the Court.

(2) Rules of the Court may be made by the Chief Magistrate, the Deputy Chief Magistrate and any two or more other Magistrates.

(3) Rules of the Court take effect from the date of publication in the *Gazette* or some later date specified in the rules.

**Court fees**

**50.** (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Court.

(2) The Court may remit or reduce a fee on account of the poverty of the party by whom the fee is payable or for any other proper reason.

**Accessibility of evidence, etc.**

**51.** (1) Subject to this section, the Court must, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

- (aa) any process relating to proceedings and forming part of the Court's records;

- (a) a transcript of evidence taken by the Court in any proceedings;
- (b) any documentary material admitted into evidence in any proceedings;

\* \* \* \* \*

- (e) a transcript of reasons for judgment (including remarks made by the Court on passing sentence);
- (f) a judgment or order given or made by the Court.

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Court:

- (a) material that was not taken or received in open court;
- (b) material that the Court has suppressed from publication;
- (c) material placed before the Court during sentencing proceedings (including material furnished under section 7 of the *Criminal Law (Sentencing) Act 1988*);
- (d) documentary material filed in connection with a preliminary examination;
- (e) a transcript of any oral evidence taken at a preliminary examination;
- (f) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;
- (g) material of a class prescribed by the regulations.

(3) The Court may permit inspection or copying of material referred to in subsection (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

(4) A decision by the Court on an application under this section is administrative and is final and not subject to any form of review.

(5) The Court may charge a fee, fixed by regulation, for inspection or copying of material under this section.

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**APPENDIX 1****LEGISLATIVE HISTORY****Transitional Provisions**

*(Transitional provisions from Statutes Repeal and Amendment (Courts) Act 1991, ss. 20 and 23)*

20. (1) On the commencement of the *Magistrates Court Act 1991* the Registrars and non-judicial staff of local courts of limited and special jurisdiction and of courts of summary jurisdiction are transferred to corresponding positions on the staff of the Magistrates Court.

(2) Any proceedings commenced before a local court of limited or special jurisdiction or a court of summary jurisdiction may be continued and completed before the Magistrates Court.

(3) A preliminary examination commenced before a justice may be continued and completed before the Magistrates Court, but the Court will apply the law as in force at the commencement of the proceedings in all respects as if references in that law to a justice were references to the Court.

23. The following provisions apply to the interpretation of Acts and instruments (whether of a legislative character or not):

- (a) a reference to a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to the District Court;
- (b) a reference to a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to the Magistrates Court;
- (c) a reference to an officer of a District Court, a District Criminal Court or a Local Court of Full Jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the District Court;
- (d) a reference to an officer of a court of summary jurisdiction or a local court of limited or special jurisdiction will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the Magistrates Court.

*(Transitional provision from Statutes Amendment (Courts Administration Staff) Act 1995, s. 20)*

20. (1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.

**Legislative History**

*(entries in bold type indicate amendments incorporated since the last reprint)*

<b>Section 3(1):</b>	definition of "Magistrate" amended by 84, 1995, s. 13 <b>definition of "minor statutory proceeding"</b> inserted by 9, 1995, Sched. 5 cl. (a); <b>amended</b> by 14, 1995, s. 82(a); 87, 1995, Sched. 4 cl. 2(a); <b>101, 1996, Sched. cl. 1</b>
Section 3(2):	definition of "Registrar" substituted by 62, 1993, s. 10
Section 3(4):	amended by 9, 1995, Sched. 5 cl. (b) substituted by 9, 1995, Sched. 5 cl. (c)
Section 7B:	Division 2 of Part 2 comprising s. 7 and heading repealed and ss. 7 - 7B and heading inserted in its place by 9, 1995, Sched. 5 cl. (d)  amended by 87, 1995, Sched. 4 cl. 2(b)

Section 10(1a):	inserted by 9, 1995, Sched. 5 cl. (e); amended by 14, 1995, s. 82(b); 87, 1995, Sched. 4 cl. 2(c)
Section 10(1b):	inserted by 87, 1995, Sched. 4 cl. 2(d)
Section 10(2):	amended by 9, 1995, Sched. 5 cl. (f)
Sections 10A and 10B:	inserted by 87, 1995, Sched. 4 cl. 2(e)
Section 12(2):	amended by 85, 1995, s. 12
Section 14(2):	repealed by 62, 1993, s. 11
Section 15:	amended by 62, 1993, s. 12; substituted by 9, 1995, Sched. 5 cl. (g); amended by 84, 1995, s. 14
Section 19(1):	amended by 84, 1995, s. 15
Section 19(2a):	inserted by 62, 1993, s. 13
Section 27(1):	substituted by 46, 1996, s. 7(a)
Section 27(2a) - (2c):	inserted by 46, 1996, s. 7(b)
Section 27(3):	amended by 46, 1996, s. 7(c)
Section 27(4):	repealed by 46, 1996, s. 7(d)
Section 29(1):	amended by 46, 1996, s. 8
Section 34(2):	substituted by 62, 1993, s. 14
Section 38(3):	amended by 84, 1995, s. 16
Section 40(1a):	inserted by 62, 1993, s. 15; repealed by 43, 1994, s. 17
Section 42(1a):	inserted by 43, 1994, s. 18(a)
Section 42(6):	inserted by 43, 1994, s. 18(b)
Section 48A:	inserted by 62, 1993, s. 16
Section 48A(1):	amended by 84, 1995, s. 17
Section 49(1):	amended by 62, 1993, s. 17; 46, 1996, s. 9
Section 51(1):	amended by 62, 1993, s. 18; 84, 1995, s. 18(a)
Section 51(1)(c) and (d):	repealed by 84, 1995, s. 18(b)
Section 51(2):	substituted by 84, 1995, s. 18(c)
Section 51(3):	amended by 65, 1995, Sched. cl. 2(a); substituted by 84, 1995, s. 18(c)
Section 51(4) and (5):	inserted by 65, 1995, Sched. cl. 2(b); substituted by 84, 1995, s. 18(c)

**Magistrates Court Act 1991****APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*