



ANNO VICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1974

No. 82 of 1974

An Act to amend the Local and District Criminal Courts Act, 1926-1974.

[Assented to 14th November, 1974]

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

Short titles.

1. (1) This Act may be cited as the "Local and District Criminal Courts Act Amendment Act (No. 2), 1974".

(2) The Local and District Criminal Courts Act, 1926-1974, 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, 1926-1974".

Commence-
ment.

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

Amendment of
principal Act,
s. 4—
Interpretation.

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "local court of special jurisdiction" in subsection (2) the following definition:—

"small claim" means a claim for a pecuniary sum not exceeding five hundred dollars—

(a) upon a contract or by way of damages for breach of contract;

(b) in respect of a quasi-contractual obligation;

(c) by way of damages for tort;

or

(d) upon a cause of action of a kind declared by the Attorney-General, by notice published in the *Gazette*, to be a cause of action upon which a small claim may be founded:

and

(b) by striking out the definition of “the local court jurisdictional limit” in subsection (2) and inserting in lieu thereof the following definition:—

“the local court jurisdictional limit” in relation to an action or a claim means a limit of twenty thousand dollars:.

4. Section 5 of the principal Act is amended by inserting after the item:

PART VII—THE COMMENCEMENT OF ACTIONS AND
PROCEEDINGS TO JUDGMENT

Amendment of
principal Act,
s. 5—
Arrangement
of Act.

the item:

PART VIIA—SMALL CLAIMS.

5. Section 31 of the principal Act is amended by striking out the passage “eight thousand dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “twenty thousand dollars”.

Amendment of
principal Act,
s. 31—
Jurisdiction of
courts of full
jurisdiction.

6. Section 32a of the principal Act is repealed.

Repeal of
s. 32a of
principal Act.

7. Section 42 of the principal Act is amended by striking out from paragraph (b) of subsection (1) the words “one-fifth” and inserting in lieu thereof the words “one-half”.

Amendment of
principal Act,
s. 42—
Cost where
plaintiff
sues in
Supreme
Court.

8. Section 46 of the principal Act is amended—

(a) by striking out from subsection (2) the passage “two hundred dollars” and inserting in lieu thereof the passage “three hundred dollars”;

and

(b) by striking out from subsection (2) the passage “forty dollars” and inserting in lieu thereof the passage “sixty dollars”.

Amendment of
principal Act,
s. 46—
Action of
replevin may
be commenced
in Supreme
Court.

9. Section 58 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “two hundred dollars” wherever it occurs and inserting in lieu thereof in each case the passage “five hundred dollars”;

and

(b) by striking out from subsection (3) the passage “two hundred dollars” and inserting in lieu thereof the passage “five hundred dollars”.

Amendment of
principal Act
s. 58—
Appeal from
local court to
Full Court.

10. Section 135 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of
s. 135 of
principal Act
and enactment
of section in
its place—

135. (1) A party to an action or proceeding in a local court of full jurisdiction—

Right of
appearance.

(a) may appear personally to conduct the action or proceeding;

or

(b) may be represented by a legal practitioner.

(2) Subject to this Act, a party to an action or proceeding in a local court of limited or special jurisdiction—

(a) may appear personally to conduct the action or proceeding;

(b) may be represented by a legal practitioner;

(c) may be represented—

(i) by an articled law clerk acting on the instructions of his principal;

or

(ii) by a person admitted to practise as a legal practitioner, who does not hold a current practising certificate acting on the instructions of a legal practitioner by whom he is employed;

or

(d) where the party is a body corporate, may be represented by an officer or employee of the body corporate authorized by the body corporate to conduct the action or proceeding on its behalf.

(3) Where a person has the conduct of an action or proceeding in any local court by virtue of rights of subrogation conferred on him by contract or by operation of law, the court may permit that person to appear as a party to the action or proceeding.

Enactment of
Part VIIA of
principal Act—

11. The following Part is enacted and inserted in the principal Act immediately after section 152 thereof:—

PART VIIA

SMALL CLAIMS

Small claims.

152a. (1) A court, in hearing and determining a small claim, shall not be bound by the rules of evidence but may inform itself upon any matter relating to the claim in such manner as it thinks fit.

(2) Where a party to proceedings based upon a small claim is not represented by a legal practitioner the court shall give that party such assistance (if any) as appears necessary to ensure that his case is properly presented and in doing so the court may call such evidence, and ask such questions of the witnesses, as it thinks fit.

(3) A court may at any stage of proceedings based upon a small claim make such amendments to the statement of claim, or other pleadings, as it thinks fit.

Right of
representation
in small
claims.

152b. (1) In any proceedings based upon a small claim a party shall not be represented by a legal practitioner or an articled law clerk—

(a) unless—

(i) all parties to the proceedings agree;

and

(ii) the court is satisfied that no other party to the proceedings who is not so represented will be unfairly disadvantaged;

or

(b) unless the proceedings have been instituted or defended by the Commissioner for Prices and Consumer Affairs in pursuance of the Prices Act, 1948-1973.

(2) In any proceedings based upon a small claim a party may be assisted in presentation of his case by another person (not being a legal practitioner, an articled law clerk, or a person who holds legal qualifications under the laws of this State or any other place) if the court is satisfied—

(a) that the party is unable to conduct the action or proceeding properly without assistance;

(b) that the person by whom he is assisted appears without fee or reward;

and

(c) that no other party will be disadvantaged by the fact that such assistance is allowed.

(3) This section does not prevent—

(a) a body corporate from being represented by an officer or employee of the body corporate (not being a legal practitioner, an articled law clerk or a person who holds legal qualifications under the laws of this State or any other place) authorized to conduct the proceedings on its behalf (whether or not he is remunerated by the body corporate for representing it in the proceedings);

or

(b) an interpreter from assisting a party in the presentation of his case provided that his fee does not exceed an amount fixed by the court at the hearing.

152c. (1) If before or during the hearing of proceedings based upon a small claim it appears to the court either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of the matters in dispute between the parties being settled by conciliation, the person constituting the court may—

Settlement of
proceedings.

(a) interview the parties in chambers (either with or without any person who may be assisting any of them in the presentation of his case);

and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of any attempt to settle proceedings under this section shall subsequently be given in evidence in any proceedings nor shall the person constituting the court be thereby disqualified from sitting to continue the hearing of the proceedings if he thinks fit to do so.

(3) Where a small claim is settled under this section the court may embody the terms of the settlement in a judgment.

Costs.

152d. In any proceedings based upon a small claim, the court shall not award costs for getting up the case for trial, or by way of counsel fees, unless—

(a) all parties to the proceedings were represented by counsel;

or

(b) the court is of the opinion that there are special circumstances justifying the award of such costs.

**Issue estoppel
does not arise
from small
claim
proceedings.**

152e. The determination of an issue in proceedings based upon a small claim shall not estop the parties to those proceedings from litigating the same issue in other proceedings based upon a different claim.

**Certain matters
not justiciable
under this Part.**

152f. (1) Where the plaintiff in an action—

(a) makes pecuniary claims (including a small claim or consisting of, or including, a number of small claims) aggregating an amount exceeding five hundred dollars;

or

(b) makes a small claim but also seeks relief in addition to a judgment for a pecuniary sum,

the provisions of this Part shall not apply in respect of the action.

(2) Where the plaintiff in an action makes a small claim and the defendant makes a counterclaim that is not a small claim, the court shall—

(a) order that the claim and the counterclaim be tried separately;

or

(b) where an order under paragraph (a) of this section would result in substantial inconvenience to the plaintiff, order that the action be dealt with otherwise than under this Part (and where such an order is made, the provisions of this Part shall not apply in respect of the action).

(3) Where the defendant to an action makes a counterclaim that is a small claim, the provisions of this Part shall not apply in respect of the counterclaim unless the claims made by the plaintiff are also justiciable under this Part.

**Amendment of
principal Act,
s. 165—
In case of
sickness, etc.,
the court may
suspend
execution.**

12. Section 165 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “two hundred dollars” and inserting in lieu thereof the passage “three hundred dollars”;

and

(b) by striking out from subsection (2) the passage “two hundred dollars” and inserting in lieu thereof the passage “three hundred dollars”.

13. Section 168 of the principal Act is amended by striking out the passage “forty dollars” and inserting in lieu thereof the passage “sixty dollars”.

Amendment of principal Act, s. 168—
What goods may be taken in execution.

14. Section 181 of the principal Act is amended by striking out from subsection (2) the passage “forty dollars” and inserting in lieu thereof the passage “sixty dollars”.

Amendment of principal Act, s. 181—
Compensation in vexatious cases.

15. Section 196 of the principal Act is amended by striking out from subsection (1) the passage “two hundred dollars” and inserting in lieu thereof the passage “three hundred dollars”.

Amendment of principal Act, s. 196—
Judgment of local courts may be removed into Supreme Court in certain cases.

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

Amendment of principal Act, s. 216—
Proceedings for recovery of premises and rent where term has expired or been determined by notice.

17. Section 228 of the principal Act is amended by striking out from subsection (1) the passage “two thousand one hundred and twenty dollars” and inserting in lieu thereof the passage “three thousand one hundred and eighty dollars”.

Amendment of principal Act, s. 228—
Proceedings in action for recovery of possession when rent is one half-year in arrear.

18. Section 230 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “ten thousand dollars” and inserting in lieu thereof the passage “twenty thousand dollars”;

and

(b) by striking out from subsection (3) the passage “ten thousand dollars” and inserting in lieu thereof the passage “twenty thousand dollars”.

Amendment of principal Act, s. 230—
Proceedings on ejection.

19. Section 259 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “eight thousand dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “twenty thousand dollars”;

(b) by striking out from subsection (1) the passage “ten thousand dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “twenty thousand dollars”;

and

(c) by striking out from subsection (1) the passage “two thousand one hundred and twenty dollars” wherever it occurs and inserting in lieu thereof, in each case, the passage “three thousand one hundred and eighty dollars”.

Amendment of principal Act, s. 259—
Extent of special jurisdiction.

Amendment of
principal Act,
s. 271—
Creditor may
obtain warrant
for arrest.

20. Section 271 of the principal Act is amended—

(a) by striking out from paragraph (a) the passage “twenty dollars” and inserting in lieu thereof the passage “thirty dollars”;

and

(b) by striking out from paragraph (a) the passage “one hundred dollars” and inserting in lieu thereof the passage “one hundred and fifty dollars”.

Amendment of
principal Act,
s. 277—
Procedure
where debtor
claims to be
brought before
court.

21. Section 277 of the principal Act is amended by striking out from paragraph (a) of subsection (4) the passage “sixty dollars” and inserting in lieu thereof the passage “ninety dollars”.

Amendment of
principal Act,
s. 279—
Powers of
court in
actions.

22. Section 279 of the principal Act is amended by striking out from paragraph (ii) of subsection (3) the passage “sixty dollars” and inserting in lieu thereof the passage “ninety dollars”.

Amendment of
principal Act,
s. 284—
Judge or
special
magistrate may
issue order for
examination of
witnesses about
to leave the
State or unable
to attend from
illness.

23. Section 284 of the principal Act is amended by striking out the passage “sixty dollars” and inserting in lieu thereof the passage “ninety dollars”.

Amendment of
principal Act,
s. 285—
Judge or
special
magistrate
may issue
commission for
examination of
witnesses
outside the
State or who
reside more
than one
hundred miles
from court
where action
to be tried.

24. Section 285 of the principal Act is amended by striking out the passage “sixty dollars” and inserting in lieu thereof the passage “ninety dollars”.

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

M. L. OLIPHANT, Governor