

**NORTHERN TERRITORY OF AUSTRALIA**

**LOCAL COURT ACT**

As in force at 1 July 2010

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 2010

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## LOCAL COURT ACT

**An Act to establish the Local Court, to confer on the Local Court jurisdiction in respect of certain civil claims, and for related purposes**

### **Part I Preliminary**

#### **1 Short title**

This Act may be cited as the *Local Court Act*.

#### **2 Commencement**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### **3 Definitions**

In this Act, unless the contrary intention appears:

***claim*** includes a cause of action.

***Court*** means the Local Court and includes a person exercising the jurisdiction of the Local Court under this or any other Act or the Rules.

***jurisdictional limit*** means \$100,000.

***Local Court*** means the Local Court established or continued in existence by this Act.

***proceeding*** means a proceeding in the Court.

***process*** includes a witness summons and any process by which a proceeding in the Court is commenced or enforced.

***Registrar*** means a person appointed under section 9 to be a Judicial Registrar, acting Judicial Registrar, Registrar, Deputy Registrar or acting Registrar of the Court, as the case may require.

***Rules*** means rules of procedure made under section 21.

**Part II Court and officers****4 Establishment of Local Court**

There is hereby established a court of record to be known as the Local Court.

**5 Constitution of Court**

- (1) The jurisdiction conferred on the Court by this or any other Act shall be exercised by a magistrate sitting alone or the person specified in accordance with the Rules.
- (2) If a person exercising the jurisdiction of the Court is interested in the matter of a proceeding pending in that Court, the person shall not hear and determine the proceeding except with the consent of the parties.

**5A Where Court may be held**

- (1) The Court may sit in the locations (including a place outside the Territory) the Minister directs and in any building approved by the Minister for the holding of the Court.
- (2) The Minister must ensure the places for the Court to sit have adequate and appropriate facilities for the Court's proceedings.
- (3) Despite subsection (1), if the Court considers it is expedient to sit in another place, the Court may sit in the other place.

**6 Concurrent administration of law and equity**

Subject to the express provisions of this or any other Act, the Court is a court of law and equity and both law and equity shall be administered in the Court in all proceedings within its jurisdiction in the same manner as provided in Part IV of the *Supreme Court Act* in matters within the jurisdiction of the Supreme Court.

**7 Abolition of distinction between court and chambers**

- (1) The distinction between court and chambers is abolished.
- (2) Nothing in subsection (1) alters the practice and procedure of the Court with respect to business that can be conducted otherwise than in open court.
- (3) The business of the Court, whether conducted in court or otherwise, shall be taken to be conducted in court.

**8 Independence of Court**

Except to the extent otherwise provided by or under this Act or the Rules, a person, in the exercise of the jurisdiction of the Court, is not subject to the direction or control of any person or body.

**9 Registrar**

- (1) The Minister shall appoint a person to be a Judicial Registrar, Registrar or Deputy Registrar of the Court.
- (2) A Judicial Registrar, Registrar or Deputy Registrar may exercise such powers and shall perform such functions as are conferred or imposed on him or her by or under this or any other Act or the Rules.
- (3) A magistrate may appoint a person to be an acting Judicial Registrar or an acting Registrar of the Court and a person so appointed has the same powers and functions as a Judicial Registrar or a Registrar, as the case may be.
- (4) If the Court is required to perform its functions at a place outside the Territory, the Minister may appoint as a Judicial Registrar, Registrar or Deputy Registrar of the Court at the place:
  - (a) a person who holds office as a registrar or deputy registrar of a court of the jurisdiction in which the place is located; or
  - (b) another appropriately qualified person.
- (5) The conditions of service (including as to remuneration) of the appointed person are those that the person is entitled to under the law of the other jurisdiction.
- (6) A person appointed under subsection (4)(a) ceases to hold office if the person ceases to hold office as a registrar or deputy registrar of a court of the other jurisdiction.
- (7) With the approval of the Minister, a Judicial Registrar, Registrar or Deputy Registrar of the Court may concurrently hold office as a registrar or deputy registrar of a court of another jurisdiction.
- (8) In this section:

**remuneration** includes salary, allowances, fees, emoluments and benefits (whether in money or otherwise).

**10 Powers of Registrar**

In addition to the powers conferred on a Registrar by this or any other Act or the Rules, a Registrar has the power to:

- (a) issue any process out of the Court;
- (b) administer an oath; and
- (c) sign a licence or certificate which the Court is authorized to issue.

**10A Bailiffs**

- (1) The Chief Magistrate may appoint a person to be a bailiff of the Court.
- (2) A member of the Police Force may exercise the powers and perform the functions of a bailiff of the Court.
- (3) A bailiff of the Court is to:
  - (a) unless a magistrate orders otherwise, serve and execute the process issued out of the Court; and
  - (b) carry out any other duties he or she is authorised to carry out under this or any other Act, the Rules or a practice direction, or as ordered by a magistrate.

**11 Protection of person exercising jurisdiction of Court**

A person exercising the jurisdiction of the Court has, in the performance of his or her duties as such, the same protection and immunity as a magistrate has in the performance of the magistrate's duties as a magistrate.

**12 Court records**

- (1) A Registrar shall cause a record to be kept of all orders of the Court and of such other matters as are directed by this Act or the Rules to be recorded.
- (2) An order made by the Court may be authenticated by a Registrar or a magistrate.
- (3) Unless the Court orders otherwise, a person may, on payment of the prescribed fee, inspect that part of the records of the Court that contains the orders of the Court.
- (4) A party to a proceeding may, without charge, inspect that part of the records of the Court that relates to the proceeding.

- (5) A document purporting to be an extract from the records of the Court and to be signed by a Registrar certifying it to be a true extract from the records is admissible in evidence and is prima facie evidence of the matters appearing in the extract.

### **13 Process**

- (1) Process may only be issued out of the Court by a Registrar or magistrate, except where otherwise provided by or under this or any other Act.
- (2) Subject to the Rules, a Registrar shall keep the original of all process issued out of the Court and shall issue or cause to be issued as many copies as are necessary.
- (3) Process issued by a Registrar may be recalled and cancelled by that or another Registrar or a magistrate.
- (4) Process issued by a magistrate may be recalled or cancelled by the magistrate or another magistrate.

## **Part III Jurisdiction**

### **14 Jurisdiction**

- (1) Subject to subsections (3) and (7), the Court has jurisdiction to hear and determine:
  - (a) a cause of action for damages or a debt, or a liquidated demand, if the amount claimed is within the jurisdictional limit;
  - (b) a claim for equitable relief if the value of the relief sought is within the jurisdictional limit;
  - (c) a claim concerning the ownership or possession of property if the value of the right to ownership or possession is within the jurisdictional limit;
  - (d) with the consent in writing of the parties:
    - (i) a cause of action for damages or a debt, or a liquidated demand, irrespective of the amount claimed;
    - (ii) a claim for equitable relief, irrespective of the value of the relief sought; and
    - (iii) a claim concerning the ownership or possession of property, irrespective of the value of the property; or

- (e) any other matter or cause of action if it is given jurisdiction to do so by or under an Act other than this Act.
- (2) In subsection (1) **cause of action for damages** includes an action in tort.
- (3) The Court does not in relation to a cause of action have jurisdiction to grant relief or a remedy in the nature of certiorari, mandamus, prohibition or quo warranto.
- (4) Where the Rules provide a procedure for determining in a proceeding whether the amount claimed or the value of the relief sought is within the jurisdictional limit of the Court the jurisdictional limit shall be determined in accordance with that procedure.
- (5) The Court does not cease to have jurisdiction in respect of a cause of action because:
  - (a) part of the cause of action arose outside the Territory, if a material part of it arose in the Territory; or
  - (b) the whole cause of action arose outside the Territory, if the defendant resided in the Territory at the time of being served with the claim.
- (6) An infant may bring a proceeding in the Court for the recovery of money payable to the infant under a contract of service or a contract for services as if the infant were of full age.
- (7) Notwithstanding anything to the contrary in this section, where a person has a claim of a kind referred to in subsection (1) the value of which is not more than \$5,000, he or she is to bring a proceeding not in the Court under this Act but in the Court under the *Small Claims Act*.
- (8) The Court may, on an application made in respect of a claim of a kind referred to in subsection (1), make a binding declaration of the rights of a party or the parties to the claim (whether or not consequential relief is or could be claimed).
- (9) A proceeding in the Court is not open to objection on the ground that a party to the proceeding is seeking a declaratory order of rights.

**15 Proceedings beyond jurisdiction**

- (1) Where a proceeding is wholly or partly beyond the jurisdiction of the Court, the Court may:
  - (a) amend the claim for the purpose of bringing the proceeding within jurisdiction;
  - (b) order that the proceeding be stayed pending the making of an application under section 18; or
  - (c) order that the claim be struck out and award costs as if it had jurisdiction and the claim were dismissed.
- (2) Where:
  - (a) under subsection (1)(b), the Court orders that a proceeding be stayed pending the making of an application under section 18; and
  - (b) within a reasonable time after the making of that order the proceeding has not been transferred to the Supreme Court,the Court may exercise the power conferred by subsection (1)(c).

**16 Pre-hearing conferences, &c.**

- (1) The:
  - (a) Court may, whether of its own motion or on the application of a party, order; or
  - (b) Rules may require,that a proceeding or part of it be referred to:
  - (c) a pre-hearing conference;
  - (d) a mediation conference; or
  - (e) an arbitration conference,which shall be conducted in accordance with the Rules by the person presiding.
- (2) If a matter is not settled between the parties at a conference referred to in subsection (1), the person presiding may refer it back to the Court.

- (3) In the settlement of a matter at a conference referred to in subsection (1), the person presiding at:
  - (a) a pre-hearing conference or a mediation conference – may, with the consent in writing of each of the parties, make a final order in the proceeding; or
  - (b) an arbitration conference – may make a final order in the proceeding.
- (4) A party to a proceeding may, within 14 days after the making of an order under subsection (3)(b), apply for a rehearing, in accordance with the Rules, to the Court.
- (5) An order made under subsection (3) has effect as an order of the Court.

## **17 Directions**

The Court may, at any stage of a proceeding (including a pre-hearing, mediation or arbitration conference), give such directions for the conduct of the proceeding as it thinks conducive to the effective, complete, prompt and economical determination of the matter the subject of the proceeding.

## **18 Transfer of proceeding to Supreme Court**

- (1) A party to a proceeding (other than a proceeding by way of an appeal to the Court) may apply to the Court for an order that the proceeding be transferred to the Supreme Court.
- (2) An application may be made under subsection (1) even if the proceeding is wholly or partly beyond the jurisdiction of the Court.
- (3) On an application under subsection (1), the Court may, if it considers it appropriate to do so, order that the proceeding be transferred to the Supreme Court.
- (4) Where an order is made under this section:
  - (a) the proceeding in the Court is discontinued;
  - (b) the record and all documents relating to the proceeding shall be transmitted by the Registrar to the Supreme Court; and
  - (c) the Supreme Court has power to regulate the procedure in the transferred proceeding.

**19 Appeal to Supreme Court**

- (1) A party to a proceeding may:
- (a) within 28 days; or
  - (b) with the leave of the Supreme Court, after the expiration of 28 days,
- after the day on which the order complained of was made, appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.
- (2) The Supreme Court may grant leave under subsection (1)(b) and the appellant may proceed with the appeal if the Supreme Court:
- (a) is of the opinion that the failure to institute the appeal within the period referred to in subsection (1)(a) was due to exceptional circumstances; and
  - (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.
- (3) A party to a proceeding may, within 14 days after the day on which the order complained of was made, appeal to the Supreme Court from an order of the Court, (other than a final order) in that proceeding, with the leave of the Supreme Court.
- (5) An appeal under this section shall be brought in accordance with the Rules of the Supreme Court.
- (6) After hearing and determining the appeal, the Supreme Court may make such order as it thinks fit, including an order remitting the case for re-hearing to the Court with or without directions on the law.
- (7) An order made by the Supreme Court on the appeal, other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.
- (8) In this section:

**order of the Court** means an order made by a magistrate exercising the jurisdiction of the Court.

**proceeding** does not include a proceeding under the *Small Claims Act*.

**20 Re-hearing**

- (1) Where, other than in a proceeding by way of appeal to the Court, an order is made by the Court against a person who:
  - (a) did not file a notice of defence;
  - (b) did not appear in the proceeding; or
  - (c) consented to the making of the order but there are grounds on which to satisfy the Court that the order is to be set aside (for example on the grounds of fraud, duress, suppression of evidence or the giving of false evidence),

the person may, subject to and in accordance with the Rules, apply to the Court for an order that the order be set aside and the proceeding be re-heard.

- (2) On an application under this section, the Court may set aside the order subject to such terms and conditions, if any, as it thinks fit and re-hear the proceeding.
- (3) Subject to subsection (4), an application under this section does not operate as a stay of the order unless the Court so orders.
- (4) An application under this section in respect of an order for the payment of money operates as a stay of so much of the order as relates to the payment of money.
- (5) If an applicant under this section fails to appear at the time fixed for the hearing of the application and the application is struck out, the applicant may re-apply only if the applicant first obtains the leave of the Court.

**Part IV Procedure****21 Rules and procedures**

- (1) For the purpose of facilitating the exercising of the jurisdiction conferred on the Court by this or any other Act, the Chief Magistrate may make such rules and give such practice directions:
  - (a) regulating the practice and procedures of the Court;
  - (b) regulating the enforcement of an order of the Court; and
  - (c) regulating and prescribing all matters and things incidental or relating to any such practice or procedure or enforcement,

as the Chief Magistrate considers necessary or convenient for the conduct of the business of the Court.

- (2) Without limiting the generality of subsection (1), the Rules may:
- (a) prescribe costs in respect of a proceeding in the Court;
  - (b) enable the hearing of a proceeding to be conducted by telephone or closed circuit television;
  - (c) provide for officers of the Court and their functions and may confer a discretionary authority on an officer, or class of officers;
  - (d) provide for the exemption of a person or proceeding, or a class of persons or proceedings, from the application of the Rules or a particular rule;
  - (e) make provision for and relate to the examination of judgment debtors and orders for the payment of judgment debts;
  - (f) subject to Part 4 of the *Personal Injuries (Liabilities and Damages) Act*, provide for interest to be paid on the amount of a claim or judgment and the rate of that interest;
  - (g) provide for the use in a proceeding of a set-off or counter claim, the joinder of actions or parties or a third party, representative proceedings, preliminary discovery or discovery from a non-party, money to be paid into or out of court and the issue, service or enforcement of process;
  - (h) provide that an attachment of earnings order or an attachment of debts order be enforced directly against an employer or garnishee who wilfully does not comply with the order;
  - (j) provide for the referral of proceedings in the Court, or part of such proceedings or a matter arising out of such proceedings, to a mediator or an arbitrator for mediation or arbitration;
  - (k) prescribe the procedures to be followed by a mediator or an arbitrator in mediating or arbitrating anything referred under paragraph (j);
  - (m) provide for the attendance by persons at conferences conducted by mediators or arbitrators; and
  - (n) provide the procedure when mediation or arbitration ends, including where it has, or has not, resulted in an agreement or order.

- (3) The Rules may impose or confer on a Registrar functions and powers in relation to the Court and proceedings before the Court and a Registrar shall perform those functions and may exercise those powers accordingly.
- (4) Subject to this Act, the practice and procedures of the Court in relation to a proceeding within its jurisdiction are in the discretion of the Court.

## **Part V            Enforcement**

### **Division 1        General**

#### **22            Enforcement of orders**

- (1) An order made by the Court for the payment of money may, subject to and in accordance with the Rules, be enforced by:
  - (a) a warrant of seizure and sale;
  - (b) an attachment of earnings order;
  - (c) an attachment of debts order;
  - (d) a charging order;
  - (e) the appointment of a receiver; or
  - (f) sequestration,or any combination of those means.
- (2) A warrant of seizure and sale may direct and authorize the person to whom it is directed to take and sell any property belonging to the person named or described in the warrant.
- (3) An order for the delivery of goods and an order for the delivery of goods or the payment of their assessed value may, subject to and in accordance with the Rules, be enforced by a warrant of delivery.
- (4) A warrant of delivery may direct and authorize the person to whom it is directed to cause the goods described in the warrant to be delivered to the person specified in the warrant or to levy payment of the assessed value of the goods from other property of the person against whom the order is made.
- (5) An order for the payment of the assessed value of goods may be enforced by the same means as any other order for the payment of money.

- (6) An order for the possession of land may, subject to and in accordance with the Rules, be enforced by a warrant of possession.
- (7) A warrant of possession to enforce an order for the possession of land may direct and authorize the person to whom it is directed to turn out any person from the land described in the warrant and may include provision for enforcing the payment of money required by the order to be paid.
- (8) A person shall not dismiss an employee or injure an employee in the employee's employment, or alter an employee's position to the prejudice of the employee, because an attachment of earnings order has been made in relation to the employee or the employee is required to make payments under an attachment of earnings order.
- Maximum penalty:        85 penalty units.
- (9) The Court of Summary Jurisdiction may order a person found guilty of an offence against subsection (8) to reimburse the employee any lost wages resulting from the action constituting the offence and to cause the employee to be reinstated in the employee's former position or in a similar position.
- (10) An amount ordered to be reimbursed under subsection (9) may be recovered from the person found guilty in the same manner as the penalty to which that person is liable under subsection (8) and may be included in the same warrant of distress.
- (11) An attachment of earnings order may apply to earnings falling to be paid:
- (a) by the Crown in right of the Territory or the Commonwealth;
  - (b) by a statutory authority representing the Crown in right of the Territory or the Commonwealth; or
  - (c) from the public moneys of the Territory.
- (12) An attachment of earnings order or an attachment of debts order shall bind the relevant earnings or debts in the hands of the person named in the order.
- (13) For the purpose of securing the payment of a judgment debt, the Court may, by order, impose a charge on the beneficial interest of the judgment debtor in a security.
- (14) An application for the appointment of a receiver by way of equitable execution may be made in accordance with the Rules and the Rules apply to the receiver who is appointed as they apply to a receiver appointed for any other purpose.

- (15) A sequestration order must appoint one or more persons as sequestrators and provide that the sequestrator or sequestrators be authorised and directed to:
- (a) enter on and take possession of the real and personal estate of the person bound;
  - (b) collect, receive and get into his, her or their hands the rents and profits of the person's real and personal estate; and
  - (c) keep the rents and profits under sequestration in his, her or their hands until the person bound complies with the judgment to be enforced by sequestration, or until further order.

**22A        Powers of person executing warrant of seizure and sale**

- (1) A person to whom a warrant of seizure and sale is directed is, by operation of this section, authorised for the purposes of executing the warrant to enter and remain on premises he or she believes on reasonable grounds to be owned or occupied by the person named or described in the warrant.
- (2) Subject to section 22B, the authorisation under subsection (1) does not authorise the use of force or violence.
- (3) A person referred to in subsection (1) may request a member of the Police Force to assist him or her in the execution of the warrant.
- (4) In this section, **premises** includes land (whether built on or not), a building or part of a building.

**22B        Powers of police who execute or assist in execution of warrant of seizure and sale**

- (1) A member of the Police Force who:
  - (a) is the person to whom a warrant of seizure and sale is directed; or
  - (b) is assisting a person in the execution of a warrant of seizure and sale,

may for the purpose of the execution of the warrant enter and remain, with the force that is necessary and reasonable, on premises that he or she believes on reasonable grounds to be owned or occupied by the person named or described in the warrant.

- (2) Nothing in this section derogates from the powers a member of the Police Force has under any other law in force in the Territory.

## **23            Enforcement of orders not for payment of money**

- (1) Where by or under this or any other Act a power (whether or not expressed as a power to make an order) is given to the Court to require:
- (a) a person to do or abstain from doing an act or thing, other than to pay money; or
  - (b) an act or thing, other than the payment of money, to be done or left undone,
- the Court may exercise the power by an order or orders.
- (2) Where the Court makes an order under subsection (1), it may:
- (a) attach to the order conditions as to time or mode of action which are authorized by or under an Act or as it thinks fit;
  - (b) suspend or rescind the order on an undertaking being given or condition being performed, as it thinks fit; and
  - (c) generally make an arrangement for carrying into effect the power, as it thinks fit.
- (3) Subject to subsection (4), a person who defaults in complying with an order made under subsection (1) is, for the default, liable to:
- (a) pay a fine for every day during which the default continues; or
  - (b) be imprisoned for so long as the default continues,
- and pay damages where loss occurred as a result of the default.
- (4) A person is not liable under this section to imprisonment for a period or periods amounting in the aggregate to more than 2 months for non-compliance with the requirement of the Court (whether made by one or more orders) to do or abstain from doing an act or thing.

## **24            Enforcement by Supreme Court**

- (1) Where an order is made by the Court and a warrant of seizure and sale has been returned unsatisfied in whole or in part, the Registrar shall, on the application of the person entitled to enforce the order, give that person a certificate of the order and of the amount remaining unpaid under the order and record the fact of the giving of the certificate in the Court records.

- (2) A person who is given a certificate under subsection (1) may file the certificate in the Supreme Court and, on the filing of the certificate, judgment shall be deemed to have been entered in the Supreme Court for the amount mentioned in the certificate as being unpaid, together with all fees paid for obtaining and filing the certificate and the prescribed amount for costs.
- (3) After the issue of a certificate under subsection (1) no further proceedings shall be taken in the Court in relation to the order but, on the filing of the certificate in the Supreme Court, the judgment that shall be deemed to have been entered may be enforced by the same means as any other judgment entered in the Supreme Court.

## **Division 2            Judgment debtors**

### **25            Definitions**

In this Division:

***examination summons*** means a summons issued under section 26(1).

***instalment order*** means an order made under section 27(1).

### **26            Examination of judgment debtor**

- (1) On the application of a judgment creditor the Court may issue a summons for the examination of a judgment debtor.
- (2) An examination summons may require the debtor to attend and be examined, on oath or otherwise, about the debtor's financial circumstances and may require the debtor to produce any document or thing in the debtor's possession or control that may tend to show the financial circumstances of the debtor.
- (3) If a judgment debtor does not attend as required by an examination summons, the Court may:
  - (a) adjourn the examination; or
  - (b) issue a warrant for the arrest of the debtor.
- (4) A warrant issued in pursuance of subsection (3)(b) continues in force until it:
  - (a) is executed;
  - (b) is revoked; or
  - (c) expires in accordance with the Rules,

whichever first occurs, and is executed when the Court has completed its examination of the debtor.

## **27 Instalment order**

- (1) The Court may order that a judgment debtor pay the amount of a judgment debt then owing by instalments.
- (2) An instalment order may be made:
  - (a) by the Court of its own motion; or
  - (b) subject to the Rules, on the application of a judgment creditor or judgment debtor.
- (3) While an instalment order is being complied with, it operates as a stay of enforcement of the judgment concerned.
- (4) Failure to comply with an instalment order does not terminate the stay of enforcement referred to in subsection (3) until the failure has continued for 14 days.

## **Part VI Miscellaneous**

### **28 Witness order**

The Court may order all witnesses, other than a party to a proceeding, to leave the Court and to remain outside and beyond the hearing of the Court until required to give evidence.

### **28A Court may order stay of proceedings**

The Court may, at any stage of a proceeding, except where otherwise provided by this or any other Act, order a stay of the proceeding on the terms and conditions (if any) as it thinks fit.

### **28B Power to amend where defect or error in form**

- (1) An order or other process of the Court is not invalid because of a defect or error in its form alone.
- (2) The Court may amend an order or other process of the Court to correct a defect or error in its form.

### **29 Power to adjourn proceeding**

- (1) The Court may, on the application of a party to the proceeding or without such application, adjourn the hearing of a proceeding:
  - (a) to such times and places;

- (b) for such purposes; and
- (c) on such terms as to costs or otherwise,  
as it thinks fit.

- (2) Where the Court has adjourned the hearing of a proceeding to a particular time, it may, on the application of a party, reasonable notice of which has been given to the other party or parties, or by consent of all the parties, order that the hearing be held or resumed before that time.

### **30 Witnesses to be examined on oath**

- (1) A person appearing to give evidence before the Court in a proceeding may be examined on oath.
- (2) A person who appears solely for the purpose of producing a document or thing need not be sworn.

### **31 Costs to be in discretion of Court**

- (1) Subject to this or any other Act or the Rules, the costs of and incidental to proceedings in the Court are in the Court's discretion and it has full power to determine by whom, to whom and to what extent the costs are to be paid.
- (2) This section and section 32 apply to a purported proceeding in the Court which is beyond its jurisdiction as if the purported proceeding were within its jurisdiction.

### **32 Costs liability of legal practitioner**

- (1) Where a legal practitioner for a party to a proceeding, whether personally or through a servant or an agent, has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by any other misconduct or default, the Court may make an order that:
  - (a) all or any of the costs between the legal practitioner and the client be disallowed or that the legal practitioner repay to the client the whole or part of any money paid on account of costs;
  - (b) the legal practitioner pay to the client all or any of the costs which the client has been ordered to pay to any party; or
  - (c) the legal practitioner pay all or any of the costs payable by a party other than the client.

- (2) Without limiting the generality of subsection (1), a legal practitioner is in default for the purposes of that subsection if a proceeding cannot conveniently be heard or proceed, or fails or is adjourned without any useful progress being made, because the legal practitioner failed to:
  - (a) attend in person or by a proper representative;
  - (b) file a document which ought to have been filed;
  - (c) lodge or deliver a document for the use of the Court which ought to have been lodged or delivered;
  - (d) be prepared with proper evidence or an account; or
  - (e) otherwise proceed.
- (3) The Court shall not make an order under subsection (1) without giving the legal practitioner a reasonable opportunity to be heard.
- (4) The Court may order that notice of a proceeding or order against a legal practitioner under this section be given to the client in such manner as it directs.

### **33 Contempt in face of Court**

- (1) Where it is alleged or appears to the Court that a person is guilty of contempt of court committed in the face of the Court, it may:
  - (a) by oral order, direct that the person be arrested and brought before it; or
  - (b) issue a warrant for the person's arrest.
- (2) On the person being brought before the Court in pursuance of an order or warrant referred to in subsection (1), the Court shall cause the person to be informed of the contempt with which the person is charged and adopt any procedure it thinks fit.
- (3) The *Bail Act*, with the necessary changes, applies to and in relation to a person brought before the Court under this section as if the person were accused of an offence and were being held in custody in relation to that offence.
- (4) Where the Court finds that a person is guilty of contempt of court, it may order that the person be imprisoned for not more than one month or fined not more than \$2,000.

- (5) Where a person found guilty of contempt of court is ordered to be imprisoned, the Court may order that the person be discharged before the end of the term of imprisonment.
- (6) The Court may accept an apology for a contempt of court and may remit any punishment for the contempt either wholly or in part.
- (7) Persons who by conduct in the Court or in the precincts of the Court interrupt the proceedings of the Court in circumstances in which it appears to the Court that those persons are acting in concert with the object of interrupting the proceedings may each be dealt with under this section for contempt of court committed in the face of the Court.

### **34 Contempt**

- (1) Without derogating from subsection (5) or section 33, a person is guilty of contempt of court if:
  - (a) having been summoned as a witness, the person fails without lawful excuse to comply with the summons; or
  - (b) having been summoned as a witness and having appeared as required, the person refuses to be sworn or to answer a lawful question; or
  - (c) being examined as a witness or being present in court and required to give evidence, the person refuses to be sworn or to answer a lawful question or, without sufficient excuse, to produce a document or thing that the person has been or is required to produce; or
  - (d) being present in court and required to give evidence, the person wilfully disobeys an order made under section 28; or
  - (e) in the opinion of the Court, the person is guilty of wilful prevarication.
- (2) In the case of a contempt referred to in subsection (1), the Court may direct the arrest of the person and, on the person being brought before it, shall cause the person to be informed of the contempt with which he or she is charged and adopt any procedure it thinks fit.
- (3) Where the Court finds that a person is guilty of a contempt referred to in subsection (1), it may order that the person be:
  - (a) imprisoned for not more than one month; or

- (b) fined not more than \$2,000 and that in default of payment of the fine within a specified time the person be imprisoned for not more than one month.
- (4) Without limiting the generality of subsection (3), if at the adjourned hearing the contempt is repeated, the Court may punish for the contempt in a manner provided in that subsection.
- (5) Without derogating from subsection (1) or section 33, a person is guilty of contempt of court if:
  - (a) having been summoned in accordance with the Rules to appear at a sitting of the Court to be orally examined concerning the failure to comply with an order for the payment of money, the person fails without lawful excuse to comply with the summons; or
  - (b) having been so summoned and having appeared as required, the person refuses to be sworn or to answer a lawful question; or
  - (c) in the opinion of Court, the person is guilty of wilful prevarication.
- (6) In the case of a contempt referred to in subsection (5) occurring before a Registrar, the Registrar shall report the contempt to the next practicable sitting of the Court constituted by a magistrate and the Court may direct the arrest of the person and may punish for the contempt as in the case of a contempt referred to in subsection (1).
- (7) Where a contempt referred to in this section also constitutes a contempt of Court committed in the face of the Court, the Court may deal with the contempt under this section or under section 33, as it thinks fit.

### **35 Certain orders not to be made by Supreme Court**

The Supreme Court does not have jurisdiction to grant relief or a remedy in the nature of certiorari, mandamus, prohibition or quo warranto against the Local Court or an officer of the Local Court.

### **36 Unclaimed money**

- (1) All moneys which, whether before or after the commencement of this Act, have been paid into court to the use of a party to a proceeding before the Court shall, if unclaimed for 3 years, be paid into the Central Holding Authority.

- (2) A person entitled to claim money paid under subsection (1) into the Central Holding Authority may apply to the Registrar for a certificate certifying the claimant's right to claim the money.
- (3) On receiving a certificate referred to in subsection (2), the Treasurer, if satisfied that the claimant is not precluded from claiming the amount by the *Limitation Act*, shall authorize payment of the money to the claimant or the claimant's agent.

### **36A Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may:
  - (c) prescribe the fees and charges payable in respect of a proceeding in the Court or any other matter or thing under this Act, including for inspection and copies of documents relating to a proceeding;
  - (d) prescribe the time for the payment of fees and charges;
  - (e) provide for the waiver of the payment of a fee or charge, in whole or in part, or the exemption of specified persons from the payment of a fee or charge;
  - (f) provide for the recovery of a fee or charge that has been waived or that a person is exempt from paying and, on its recovery, the payment of an amount equal to the fee or charge to the Court; and
  - (g) provide for the recovery of disbursements.

## **Part VII Repeal and saving**

### **37 Repeal**

The Acts listed in the Schedule are repealed.

### **38 Saving of jurisdiction**

- (1) A Local Court in existence immediately before the commencement of this Act shall continue as if it were the Court established by this

Act and all proceedings already commenced in that Court shall be continued, heard and determined under this Act in accordance with this Act and the Rules and all judgments and orders of that Court shall continue in force as if they were judgments and orders of the Court established by this Act.

- (2) All records of a Local Court in existence immediately before the commencement of this Act shall continue and be incorporated with, and shall be deemed to form part of, the records of the Court established by this Act.
- (3) A reference to a Local Court in an Act, instrument of a legislative or administrative character or other document in force before the commencement of this Act shall be read as including a reference to the Court established by this Act.
- (4) A reference to a Clerk of Court in an Act, instrument of a legislative or administrative character or other document in force before the commencement of this Act shall be read as including a reference to a Registrar, or to a Clerk of the Court of Summary Jurisdiction, as appropriate.

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**Schedule Acts repealed**

section 37

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Number and year	Act or provision year
No. 6 1941	<i>Local Courts Ordinance 1941</i>
No. 4 1947	<i>Local Courts Ordinance 1947</i>
No. 9 1952	<i>Local Courts Ordinance 1952</i>
No. 20 1954	<i>Local Courts Ordinance 1954</i>
No. 25 1955	<i>Local Courts Ordinance 1955</i>
No. 41 1957	<i>Local Courts Ordinance 1957</i>
No. 2 1965	<i>Local Courts Ordinance 1964</i>
No. 24 1965	<i>Local Courts Ordinance 1965</i>
No. 46 1970	<i>Local Courts Ordinance 1970</i>
No. 60 1970	<i>Local Courts Ordinance (No. 2) 1970</i>
No. 17 1971	<i>Local Courts Ordinance 1971</i>
No. 14 1974	<i>Local Courts Ordinance 1974</i>
No. 5 1976	<i>Local Courts Ordinance 1975</i>
No. 40 1979	<i>Local Courts Act 1979</i>
No. 115 1979	<i>Local Courts Act (No. 2) 1979</i>
No. 25 1981	<i>Local Courts Act (No. 2) 1979 Amendment Act 1981</i>
No. 108 1981	<i>Local Courts Amendment Act 1981</i>
No. 45 1983	<i>Local Courts Amendment Act 1983</i>

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Local Court Act 1989 (Act No. 31, 1989)***

Assent date	28 June 1989
Commenced	1 January 1991 ( <i>Gaz</i> G49, 12 December 1990, p 2)

***Local Court Amendment Act 1991 (Act No. 76, 1991)***

Assent date	10 December 1991
Commenced	1 February 1992 ( <i>Gaz</i> S7, 31 January 1992)

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date	23 June 1995
Commenced	23 June 1995

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz</i> S15, 13 June 1996)

***Local Court Amendment Act 1997 (Act No. 20, 1997)***

Assent date	7 May 1997
Commenced	1 June 1998 ( <i>Gaz</i> G19, 20 May 1998, p 2)

***Local Court Amendment Act 1998 (Act No. 58, 1998)***

Assent date	1 September 1998
Commenced	7 October 1998 ( <i>Gaz</i> G39, 7 October 1998, p 2)

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date	18 June 1999
Commenced	18 June 1999

***Local Court Amendment Act 2001 (Act No. 64, 2001)***

Assent date	21 December 2001
Commenced	13 February 2002 ( <i>Gaz</i> G6, 13 February 2002, p 4)

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***Personal Injuries (Liabilities and Damages) (Consequential Amendments) Act 2003 (Act No. 4, 2003)***

Assent date 18 March 2003  
 Commenced 1 May 2003 (*Gaz* G17, 30 April 2003, p 3)

***Statute Law Revision Act 2003 (Act No. 12, 2003)***

Assent date 18 March 2003  
 Commenced 18 March 2003

***Evidence and Other Legislation (Witness Assistance) Amendment Act 2006 (Act No. 32, 2006)***

Assent date 3 November 2006  
 Commenced 3 November 2006

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date 8 March 2007  
 Commenced 8 March 2007

***Cross-border Justice Act 2009 (Act No. 1, 2009)***

Assent date 12 March 2009  
 Commenced ss 67(b), 68(2)(e), 106, 108, 114 and 116 and pt 15, div 6: 1 December 2009; rem: 1 November 2009 (*Gaz* S59, 29 October 2009)

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date 20 May 2010  
 Commenced 1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

### **3 SAVINGS AND TRANSITIONAL PROVISIONS**

s 8(2) *Local Court Amendment Act 1997* (Act No. 20, 1997)

### **4 LIST OF AMENDMENTS**

s 3 amd No. 14, 1995, s 12; No. 20, 1997, s 4; No. 32, 2006, s 10  
 s 5 amd No. 76, 1991, s 4  
 s 5A ins No. 1, 2009, s 150  
 s 9 amd No. 14, 1995, s 12; No. 1, 2009, s 151  
 s 10A ins No. 20, 1997, s 5  
 s 11 amd No. 76, 1991, s 5  
 s 12 amd No. 76, 1991, s 6; No. 20, 1997, s 6  
 s 13 amd No. 20, 1997, s 7  
 s 14 amd No. 76, 1991, s 7; No. 20, 1997, s 8  
 s 16 sub No. 76, 1991, s 8  
 s 17 amd No. 76, 1991, s 9  
 s 18 amd No. 20, 1997, s 9  
 s 19 amd by No. 20, 1997, s 10; No. 64, 2001, s 4; No. 12, 2003, s 10  
 s 20 amdb by No. 20, 1997, s 11  
 s 21 amd No. 76, 1991, s 10; No. 58, 1998, s 4; No. 4, 2003, s 4  
 s 22 amd No. 17, 1996, s 6; No. 20, 1997, s 12; No. 27, 1999, s 15; No. 12, 2010, s 3  
 ss 22A – 22B ins No. 58, 1998, s 5  
 s 24 amd No. 20, 1997, s 13  
 ss 28A – 28B ins No. 20, 1997, s 14  
 s 33 amd No. 76, 1991, s 11

## ENDNOTES

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s 34 amd No. 20, 1997, s 15; No. 32, 2006, s 11  
s 36 amd No. 14, 1995, s 12; No. 4, 2007, s 7  
s 36A ins No. 58, 1998, s 6  
amd No. 64, 2001, s 5