

THE NORTHERN TERRITORY OF AUSTRALIA

No. 40 of 1979

AN ACT

To amend the Local Courts Act

[Assented to 27 April 1979]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

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| 1. This Act may be cited as the <u>Local Courts Act 1979</u> . | Short title |
| 2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the <u>Gazette</u> . | Commencement |
| 3. The <u>Local Courts Act</u> is in this Act referred to as the <u>Principal Act</u> . | Principal Act |
| 4.(1) Section 23(1) of the <u>Principal Act</u> is amended - | Duties of Bailiff |
| (a) by omitting "or" second occurring; and | |
| (b) by inserting after "direction," the words "or a private bailiff employed under the <u>Commercial and Private Agents Act</u> ,". | |
| (2) Section 23(2)(d) of the <u>Principal Act</u> is amended by omitting "5 days" and substituting "10 days". | |
| 5.(1) Section 87(1) of the <u>Principal Act</u> is amended by omitting "other than an unsatisfied judgment summons". | Ordinary and special summonses may be served by plaintiff or by person employed by him |
| (2) Section 87 of the <u>Principal Act</u> is amended by omitting sub-section (2) and substituting the following sub-sections: | |
| "(2) Where a summons is served by a person, that person shall forthwith endorse on the duplicate summons the day of the month and the year of service, and shall, as soon as practicable after the service, swear an affidavit that includes details of the place and manner of service and file the duplicate | |

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summons together with the affidavit of service with the Clerk of the Court from which the summons was issued.

Penalty: \$100.

"(3) Where a person is authorized to serve a summons, other than an unsatisfied judgment summons, by sub-section (1) and the address for service is within the Northern Territory, the person may serve the summons by posting it by prepaid certified mail to the defendant at his last known or usual place of residence or business or in the case of a body corporate to the registered office or last known address of that body corporate.

"(4) Proof of service pursuant to sub-section (3) may be by affidavit setting out details of the time, date and place of posting and annexing to the affidavit a duly completed receipt for the lodgement of the envelope containing the summons together with the acknowledgement of delivery of the envelope containing the summons duly signed in accordance with the provisions of the Postal Service Act 1975 of the Commonwealth.

"(5) Where a summons is served by post in accordance with this section, the person who delivers the envelope to the post office shall, as soon as practicable after the return of the acknowledgement of delivery, swear an affidavit of service and file the duplicate summons together with the affidavit of service with the Clerk of the Court from which the summons was issued.

Penalty: \$100.

"(6) Nothing in this section shall be taken to limit the powers of the Court to order that any document may be served in such other manner as it thinks fit or to order, in substitution for service, that notice by advertisement or otherwise shall constitute sufficient service in accordance with the Rules of Court."

What goods
may be taken
in execution

6. Section 150 of the Principal Act is amended by omitting from and including "(excepting the wearing apparel" to and including "under hire to that person)" and substituting "(excepting necessary wearing apparel and household property of that person and his family, tools of trade, plant and equipment, instruments or reference books to a value of \$500)".

7. Section 170 of the Principal Act is repealed and the following section substituted:

Procedure
where party
summoned
does not
appear

"170.(1) Where a person is served with an unsatisfied judgment summons and does not attend as

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required by the summons, the Court may, upon proof of personal service of summons on the person summoned -

- (a) order a warrant for the person summoned to issue, directing the bailiff to cause the person to be brought before the Court nearest to the place where he is apprehended so that he may be examined as to the matters specified in the unsatisfied judgment summons in accordance with section 168;
- (b) adjourn the hearing to a time and place specified by the Court, to another place or sine die, and order that the person summoned to attend before the Court at that time, date and place, when fixed, for examination; or
- (c) where the Court is satisfied that the person summoned has no just cause or excuse for his failure to attend in answer to the unsatisfied judgment summons and that the Court is the nearest to which the person summoned resides or carries on business at the time of the issue of the summons, the Court may -
 - (i) subject to sub-section (6), order that for the failure to attend the person summoned be committed to a gaol or some other place of imprisonment for a period not exceeding 40 days; and
 - (ii) proceed ex parte and upon hearing evidence, make an order for payment of the judgment debt or so much of the judgment debt as remains outstanding at such time and in such instalments as it thinks fit.

"(2) A warrant of apprehension issued under sub-section (1) shall continue in force until it is executed, revoked by the Court or expires in accordance with the Rules of Court.

"(3) A member of the Northern Territory Police Force may, if requested by a bailiff, assist in the execution of a warrant of apprehension issued under sub-section (1).

"(4) Where the Court adjourns the hearing under sub-section (1)(b) and fixes a time and place for hearing the adjourned hearing, the Clerk of the Court shall cause a notice of the adjournment and the time and place for the adjourned hearing to be served on the person summoned.

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"(5) A person summoned shall attend in accordance with an order made under sub-section (1)(b) and served in accordance with sub-section (4).

Penalty: \$200.

"(6) A Court shall not make an order under sub-section (1)(c)(i) unless it is satisfied that the unsatisfied judgment summons was served on the person summoned by a bailiff or a private bailiff licensed under the Commercial and Private Agents Licensing Act or unless the person summoned signed an acknowledgement of service of the unsatisfied judgment summons."

Bailiffs
fees

8. Section 272 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

"(2) Where an attempted service of process or execution of warrant is unsuccessful no additional fee shall be payable for any subsequent service or execution or attempted service or execution unless the process is returned to the Clerk of the Court with the prescribed form stating that service or execution has been attempted and the Clerk is satisfied that the attempt was a reasonable attempt at service or execution."

Second
Schedule

9. The Second Schedule to the Principal Act is repealed and the following Schedule substituted:

"SECOND SCHEDULE

Section 272

BAILIFFS' FEES

1. Serving, or attempting to serve, a summons or notice of process, or executing, or attempting to execute, a warrant, within the Territory -
 - (a) For the first attempted service and one subsequent service or attempt \$10.00
 - (b) For any additional service or attempt
 \$10.00.
2. Service of a summons by mail in accordance with this Act - the fees charged under the Postal Services Act 1975 of the Commonwealth.
3. Executing a warrant to give possession under Part XI or Part XII \$20.00
4. Levying \$20.00
5. Possession of goods on the premises under one or more warrants of execution - the amount of wages actually paid to the bailiff or bailiff's assistant.

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6. Cartage or removal of goods and storage (if any) - the amount actually paid for the cartage and storage.
 7. Feeding of horses, cattle or other animals seized - the amount actually paid for the feeding.
 8. Sale of goods - the amount actually charged by the auctioneer."
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