

NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT AMENDMENT BILL 1997

TABLE OF PROVISIONS

Clause

1. Short title
2. Commencement
3. Principal Act
4. Definitions
5. New section:

"10A. BAILIFFS"
6. Court records
7. Process
8. Jurisdiction
9. Transfer of proceeding to Supreme Court
10. Appeal to Supreme Court
11. Re-hearing
12. Enforcement
13. Enforcement by Supreme Court
14. New sections:

"28A. COURT MAY ORDER STAY OF PROCEEDINGS
"28B. POWER TO AMEND WHERE DEFECT OR ERROR
OF FORM"
15. Contempt

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Local Court Act*

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:

1. SHORT TITLE

This Act may be cited as the *Local Court Amendment Act 1997*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Local Court Act* is in this Act referred to as the Principal Act.

4. DEFINITIONS

Section 3 of the Principal Act is amended -

(a) by omitting from the definition of "conduct money" -

(i) "witness subpoena" and substituting "witness summons"; and

(ii) "subpoena or" (twice occurring);

Local Court Amendment

(b) by inserting after the definition of "conduct money" the following:

"'claim' includes a cause of action;";

(c) by omitting "\$40,000" from the definition of "jurisdictional limit" and substituting "\$100,000"; and

(d) by omitting "subpoena" from the definition of "process" and substituting "summons".

5. NEW SECTION

The Principal Act is amended by inserting after section 10 the following:

"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."

6. COURT RECORDS

Section 12(3) of the Principal Act is amended by omitting "Any person" and substituting "Unless the Court orders otherwise, a person".

7. PROCESS

Section 13 of the Principal Act is amended -

(a) by omitting from subsection (1) "Registrar" and substituting "Registrar or magistrate"; and

(b) by adding at the end the following:

"(4) Process issued by a magistrate may be recalled or cancelled by the magistrate or another magistrate."

Local Court Amendment

8. JURISDICTION

(1) Section 14 of the Principal Act is amended -

(a) by omitting from subsection (1) "subsection (3)" and substituting "subsections (3) and (7)"; and

(b) by adding at the end the following:

"(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 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."

(2) The amendments effected in subsection (1) do not apply to or in relation to proceedings commenced under the Principal Act as in force before the commencement of this Act.

9. TRANSFER OF PROCEEDING TO SUPREME COURT

Section 18(1) and (3) of the Principal Act is amended by omitting "the Supreme Court" (first occurring) and substituting "the Court".

10. APPEAL TO SUPREME COURT

Section 19(3) of the Principal Act is amended by omitting "(other than a small claim proceeding)" and substituting "(including a small claim proceeding)".

11. RE-HEARING

Section 20 of the Principal Act is amended -

(a) by omitting subsection (1) and substituting the following:

"(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 -

Local Court Amendment

- (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.";

- (b) by omitting from subsections (2) and (3) "the final order" and substituting "the order"; and
- (c) by omitting from subsection (4) "a final order" substituting "an order".

12. ENFORCEMENT

Section 22 of the Principal Act is amended -

- (a) by omitting from subsection (1)(b) "order; or" and substituting "order;";
- (b) omitting subsection (1)(c) and substituting the following:
 - "(c) an attachment of debts order;
 - (d) a charging order;
 - (e) the appointment of a receiver; or
 - (f) sequestration,"; and
- (c) by adding at the end the following:

"(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.

Local Court Amendment

"(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."

13. ENFORCEMENT BY SUPREME COURT

Section 24(3) of the Principal Act is amended by omitting ", including enforcement under the *Foreign Judgments (Reciprocal Enforcement) Act*".

14. NEW SECTIONS

The Principal Act is amended by inserting after section 28 the following:

"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 OF 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."

15. CONTEMPT

Section 34(1) of the Principal Act is amended -

- (a) by omitting from paragraph (a) -
 - (i) "subpoenaed" and substituting "summoned";
 - and

Local Court Amendment

- (ii) "subpoena" and substituting "summons"; and
 - (b) by omitting from paragraph (b) "subpoenaed" and substituting "summoned".
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