

LOCAL COURTS.

No. 127 of 1982.

AN ACT to amend the Local Courts Act 1904-1981.

[Assented to 10 December 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Local Courts Amendment Act 1982*.

Short title
and citation.

(2) In this Act the Local Courts Act 1904-1981 is referred to as the principal Act.

Reprint
approved
10 December
1975 and
amended by
Acts Nos. 69
and 111 of
1976 and 93
and 118 of
1981.

(3) The principal Act as amended by this Act may be cited as the Local Courts Act 1904-1982.

Commence-
ment.

2. (1) Subject to subsection (2) of this section this Act shall come into operation on the day on which it is assented to by the Governor.

(2) The provisions of sections 7, 8, 9, 11 and 12 of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

Section 1
amended.

3. Section 1 of the principal Act is amended by deleting that portion of the section commencing with "It" and continuing to the end of the section.

Section 46
amended.

4. Section 46 of the principal Act is amended in paragraph (d) of subsection (2) by deleting "(including vacation)".

Section 60
amended.

5. Section 60 of the principal Act is amended by deleting "originally exceeding six thousand dollars".

Section 63
amended.

6. Section 63 of the principal Act is amended by deleting "expenses is made on the prescribed scale" and substituting the following—

" reasonable expenses is made " .

Section 86
amended.

7. Section 86 of the principal Act is amended by inserting after "Court" in the third place where it occurs the following—

" other than as an action for a small debt " .

Section 92
amended.

8. Section 92 of the principal Act is amended by inserting after "action" where it first occurs the following—

" other than an action for a small debt " .

9. After section 106 of the principal Act the following Part is inserted—

Part VIA
inserted.

“ PART VIA.—ACTIONS FOR SMALL DEBTS.

106A. (1) In this Part—

Interpreta-
tion of this
Part.

(a) “general provision” means—

(i) a provision of this Act other than a provision of this Part;

or

(ii) a provision of the Rules of Court other than a provision made for the purposes of this Part;

“this Part” includes Rules of Court made for the purposes of this Part;

(b) the expression “stipendiary magistrate” has the same meaning as it has in the Stipendiary Magistrates Act 1957.

(2) A reference in this Part to the amount of a claim or counterclaim in respect of a cause of action is a reference to the amount claimed and set forth in the plaint or counterclaim, as the case may be, whether on a balance of account, or after an admitted set-off or a reduction on account of any sum paid by or credited to the party from whom the amount is claimed, or otherwise.

106B. (1) Subject to section 106G of this Act, where the plaintiff in an action in a Local Court is authorized by section 106C of this Act to elect to have the action heard and determined under this Part and, in accordance with section 106C, he so elects—

Election to
have action
heard under
this Part.

(a) the court shall hear and determine the action under this Part; and

(b) for the purposes of this Act, the action is an action for a small debt.

(2) Subsection (1) (a) of this section does not affect the operation of section 46 (2) (a) or 73 (a) of this Act in relation to an action for a small debt.

Actions in which election may be made.

106C. (1) The plaintiff in an action in a Local Court may, by his plaint, elect to have the action heard and determined under this Part—

- (a) where there is a single cause of action—if the cause of action is a debt or liquidated demand in money and the amount claimed in respect of the cause of action does not exceed \$1 000; or
- (b) where two or more causes of action are joined—if at least one of the causes of action is a debt or liquidated demand in money and none of the respective amounts claimed in respect of the causes of action exceeds \$1 000.

(2) A plaintiff who has a cause of action for more than \$1 000 may, for the purpose of enabling that cause of action to be tried as or joined in an action for a small debt, abandon the excess (which abandonment shall be stated when the plaint is entered), and thereupon the plaintiff may, pursuant to this Act, recover to an amount not exceeding \$1 000, and the judgment of the court shall be in full discharge of all demands in respect of the cause of action and entry of the judgment of the court shall be made accordingly.

Constitution of court.

106D. A Local Court hearing and determining an action for a small debt shall be constituted by a stipendiary magistrate and, when hearing and determining the action, that stipendiary magistrate may be referred to as sitting in the Small Debts Division of that court.

106E. (1) Where the defendant in an action for a small debt counterclaims an amount exceeding \$1 000 in respect of any cause of action the court shall—

Counter-claims.

- (a) if all the parties consent to the hearing and determination of the whole action under this Part—hear and determine the whole action under this Part; or
- (b) if any of the parties does not consent to the hearing and determination of the whole action under this Part—
 - (i) hear and determine the claim under this Part and order that the counterclaim be heard and determined separately under the general provisions; or
 - (ii) at the request of the plaintiff, order that the whole action be heard and determined under the general provisions.

(2) This section does not affect the application of section 34 of this Act to an action in which a counterclaim involves matters beyond the jurisdiction of a Local Court.

106F. Without affecting the operation of section 106E (1) (b) (ii) of this Act, a Local Court may order that any action that has been commenced as an action for a small debt be heard and determined under the general provisions if—

Application of general provisions may be ordered in any case.

- (a) all the parties so request; or
- (b) the court thinks fit having regard to the importance of a principle of law involved or to the complexity of the issues or of the facts.

Effect of
orders under
sections
106E and
106F.

106G. Where an order is made under section 106E (1) (b) (ii) or 106F of this Act in relation to an action—

- (a) the action ceases to be an action for a small debt for the purposes of this Act and the general provisions shall apply to and in relation to the action as if the plaintiff had not elected to have the action heard and determined under this Part;
- (b) if in respect of a cause of action for an amount exceeding \$1 000 the excess has been abandoned that excess shall be deemed not to have been abandoned except where the cause of action is for an amount exceeding \$6 000 in which case the excess over \$6 000 shall be deemed to have been abandoned pursuant to section 59 of this Act.

Court may
obtain
particulars.

106H. Sections 47A, 47B, 65, 66, 67 and 68 of this Act shall not apply to or in relation to an action for a small debt but the clerk or the court may, in accordance with Rules of Court, require a party to furnish particulars of any claim, defence or counterclaim.

Settlement.

106 I. (1) The primary function of the court hearing an action for a small debt is to attempt to bring the parties to the action to a settlement acceptable to all the parties and the court may, at any stage of the proceedings, do all such things and take all such steps as it considers to be appropriate for that purpose.

(2) Where it appears to the court hearing an action for a small debt to be impossible to attain a settlement acceptable to all the parties the court shall proceed with the hearing and determination of the action.

(3) Anything said or done by a party for the purpose of attempting to attain a settlement in an action for a small debt shall be deemed to be said or done without prejudice to any evidence or submission which he has adduced or made, or which he may subsequently adduce or make, in or in respect of the proceedings, and the saying or doing of that thing shall not disqualify the stipendiary magistrate constituting the court from sitting to hear the action or continue to hear the action, as the case may require.

106J. An action for a small debt shall be heard and determined in private unless the court hearing the action otherwise directs. Hearing of action.

106K. In an action for a small debt the court shall not be bound by rules or practice as to evidence but may inform itself on any matter in such manner as it thinks fit. Evidence.

106L. (1) At the hearing of an action for a small debt, or during any attempt to settle such an action under section 106 I of this Act, a party shall not be entitled to be represented by an agent unless the court considers that an agent should be permitted to that party as a matter of necessity and approves accordingly. Representation.

(2) Subsection (1) of this section does not authorize a court to give approval for a party to an action for a small debt to be represented by an agent who has a legal qualification under the laws of this State or of any other place, or who is in the nature of a professional advocate unless—

- (a) all parties to the action agree; and
- (b) the court is satisfied that the parties, other than the party who has applied for the approval, or any of them shall not be thereby unfairly disadvantaged.

Costs.

106M. Costs other than—

- (a) the court fees and service fees paid by the successful party; and
- (b) costs of execution,

shall not be allowed to or against any party to an action for a small debt unless the court is of the opinion that because of the existence of exceptional circumstances an injustice would be done to a party if other costs of the action were not allowed to him.

Proceedings
not subject
to appeal or
judicial
supervision.

106N. (1) Where in an action for a small debt a settlement is brought about pursuant to section 106 I of this Act or an order or judgment is made or given by the court, the settlement, order or judgment shall be final and binding on all parties to the action, and no appeal shall lie in respect thereof.

(2) Subject to subsection (3) of this section, no—

- (a) writ of *certiorari*, or prohibition, or other prerogative writ;
- (b) summons, rule or order under section 115 of this Act; or
- (c) declaratory judgment,

shall issue or be served, made or given in respect of an action for a small debt or in respect of an order or judgment made or given therein.

(3) Subsection (2) of this section does not prevent the service, making or giving of a writ, summons, rule, order or judgment mentioned in paragraph (a), (b) or (c) of that subsection if the court before which it is sought is satisfied—

- (a) that an action, or an order or judgment made or given in an action, involves matter beyond the jurisdiction of a stipendiary magistrate sitting in the Small Debts Division of a Local Court; or
- (b) that there has occurred in an action a denial of natural justice to a party therein.

(4) For the purposes of subsection (3) (a) of this section where a matter is heard and determined under this Part pursuant to consent given by the parties under section 106E (1) (a) of this Act, that matter shall be regarded as being within the jurisdiction of a stipendiary magistrate sitting in the Small Debts Division of a Local Court.

(5) Nothing in this section prevents—

- (a) the setting aside under section 47 of this Act of a judgment by default in an action for a small debt; or
- (b) the setting aside under section 73 of this Act of a judgment entered or given under paragraph (a) or (b) of that section in an action for a small debt or of the execution upon such a judgment.

106 O. (1) In relation to an action for a small debt, a provision of this Part that is inconsistent with a general provision shall prevail to the extent of the inconsistency unless this Part provides otherwise.

Application of this Act to actions for small debts.

(2) Subject to subsection (1) of this section the general provisions shall apply to an action for a small debt in the same manner as they apply to any other action in a Local Court. " .

Headings
in Part VII
amended.

10. The principal Act is amended by deleting the headings immediately preceding section 107 and substituting the following headings—

“ PART VII.—APPEALS AND JUDICIAL REVIEW.

Appeals. ”.

Section 130
amended.

11. Section 130 of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (2a) Where—

(a) a summons obtained under this section is duly served on a judgment debtor and at the same time payment or a tender of payment of his reasonable expenses is made; and

(b) the debtor refuses or neglects to obey the summons,

the magistrate before whom the debtor should have appeared may, if good cause is not shown for the non-appearance of the debtor, issue his warrant to bring and have the debtor before a magistrate to be examined pursuant to this section.

(2b) Where a warrant is issued under subsection (2a) of this section the judgment debtor shall be brought before a magistrate for examination on the day on which he is apprehended pursuant to the warrant or, if that is not practicable, as soon as is practicable thereafter. ” .

Section 144
amended.

12. Section 144 of the principal Act is amended by repealing subsection (2) and substituting the following subsections—

“ (2) Where—

(a) a summons obtained under this section is duly served on a judgment

debtor and at the same time payment or a tender of payment of his reasonable expenses is made; and

- (b) the debtor refuses or neglects to obey the summons,

the magistrate before whom the debtor should have appeared may, if good cause is not shown for the non-appearance of the debtor issue his warrant to bring and have the debtor before a magistrate to be examined pursuant to this section.

(3) Where a warrant is issued under subsection (2) of this section the judgment debtor shall be brought before a magistrate for examination on the day on which he is apprehended pursuant to the warrant or, if that is not practicable, as soon as is practicable thereafter.

(4) Where a judgment debtor refuses or neglects to produce books, deeds, papers, or writings as directed by a summons obtained under this section and duly served on him the magistrate may make an order for their production by him. " .

13. Section 161 of the principal Act is repealed. Section 161 repealed.
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