



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 54 of 1972

An Act to amend the Local and District Criminal Courts Act, 1926-1971 ; and to make consequential amendments to the Criminal Law Consolidation Act, 1935-1971 ; the Evidence Act, 1929-1969 ; the Juries Act, 1927-1971 ; the Justices Act, 1921-1969 ; the Poor Persons Legal Assistance Act, 1925-1969 ; and the Prisons Act, 1936-1971.

[Assented to 27th April, 1972]

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

1. (1) This Act may be cited as the "Local and District Criminal Courts Act Amendment Act, 1972". Short title.
- (2) The Local and District Criminal Courts Act, 1926-1971, as amended by this Act, may be cited as the "Local and District Criminal Courts Act, 1926-1972".
- (3) The Local and District Criminal Courts Act, 1926-1971, is hereinafter referred to as "the principal Act".

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

Amendment of
principal Act,
s. 4—
Interpretation.

3. Section 4 of the principal Act is amended—

(a) by striking out from subsection (3) the definition of “District Criminal Court” and inserting in lieu thereof the following definitions:

“District Criminal Court” means a court constituted of a District Criminal Court Judge:

“District Criminal Court Judge” means a Judge acting in the exercise of the jurisdiction conferred on him by the district criminal court provisions;;

and

(b) by striking out the definition of “Recorder”.

Amendment of
principal Act,
s. 51—
Local Court
Judges and
District
Criminal Court
Judges.

4. Section 51 of the principal Act is amended by striking out the word “Recorder” and inserting in lieu thereof the passage “District Criminal Court Judge”.

Amendment of
principal Act,
s. 26—
Duties of
clerk.

5. Section 26 of the principal Act is amended by striking out from subsection (1) the passage “at or near the place where the court is held”.

Amendment of
principal Act,
s. 35b—
Incidental
equitable
rights and
remedies.

6. Section 35b of the principal Act is amended by inserting after the present contents thereof (which are hereby designated subsection (1) thereof) the following subsections:—

(2) A local court shall have—

(a) jurisdiction to pronounce any declaratory judgment;

and

(b) jurisdiction in equity to pronounce or make any judgment, decree or order,

that is, in the opinion of the court, incidental or ancillary to, and necessary or expedient for the just determination of, proceedings before the court.

(3) This section does not confer on a local court jurisdiction to entertain any principal claim for declaratory or equitable relief that it would not otherwise have had jurisdiction to entertain, or in any event, jurisdiction to make any order or adjudication otherwise than in accordance with established principles upon which declaratory or equitable relief may be granted.

(4) The provisions of subsection (2) of this section are supplementary to, and do not derogate from, the equitable jurisdiction otherwise conferred upon a local court under this Act.

7. Section 35f of the principal Act is amended by inserting after the present contents thereof (which are hereby designated subsection (1) thereof) the following subsections:—

Amendment of
principal Act,
s. 35f—

Application of
ss. 30a and 30b
of the Supreme
Court Act
extended to
this Act.

(2) A plaintiff or his solicitor must before the hearing of proceedings in which the plaintiff seeks a declaratory judgment under the provisions referred to in subsection (1) of this section, file in the court a certificate that at the date of the commencement of the action the evidence available to him was not such as to induce him to believe that the total damages awarded in the proceedings would exceed the jurisdictional limit of a local court of full jurisdiction.

(3) Where proceedings, in which a declaratory judgment is sought or has been pronounced pursuant to the provisions referred to in subsection (1) of this section, are before a local court any party to the proceedings may apply, at any time before or after the entry of the declaratory judgment, to a Judge of the Supreme Court for an order that the proceedings be removed into the Supreme Court.

(4) The Judge to whom the application is made shall—

(a) upon production of a certificate signed by the plaintiff or his solicitor to the effect that the total award of damages or compensation required to do justice between the parties is likely to exceed the jurisdictional limit of a local court of full jurisdiction;

or

(b) upon being satisfied by such other evidence as the Judge may require that the total award of damages or compensation required to do justice between the parties is likely to exceed the jurisdictional limit of a local court of full jurisdiction,

order that the proceedings be removed into the Supreme Court.

(5) The Judge may make any ancillary order that he considers necessary to give effect to the removal of the proceedings.

(6) Upon removal of proceedings under this section they may be continued and completed before the Supreme Court in all respects as if they had been originally commenced before that Court.

Enactment of
s. 35g of
principal Act—

8. The following section is enacted and inserted in the principal Act immediately after section 35f thereof:—

Power to
award interest.

35g. (1) Unless good cause is shown to the contrary, a local court shall, upon the application of a party in favour of whom a judgment for the payment of damages, compensation or any other pecuniary amount has been, or is to be, pronounced, include in the judgment an award of interest in favour of the judgment creditor in accordance with the provisions of this section.

(2) The interest—

(a) shall be at the rate of seven per centum per annum or such lower rate as may be fixed by the court;

(b) shall be calculated—

(i) where the judgment is given upon an unliquidated claim—from the date of the commencement of the proceedings to the date of the judgment;

or

(ii) where the judgment is given upon a liquidated claim—from the date upon which the liability to pay the amount of the claim fell due to the date of the judgment,

or in respect of such other period as may be fixed by the court;

and

(c) shall be payable in respect of the whole or any part of the amount for which judgment is given in accordance with the determination of the court.

(3) No interest shall be awarded in respect of—

(a) damages or compensation in respect of loss or injury to be incurred or suffered after the date of the judgment;

or

(b) exemplary or punitive damages.

- (4) This section does not—
- (a) authorize the award of interest upon interest;
 - (b) apply in relation to any sum upon which interest is recoverable as of right by virtue of an agreement or otherwise;
 - (c) affect the damages recoverable upon the dishonour of a negotiable instrument;
 - (d) authorize the award of any interest otherwise than by consent upon any sum for which judgment is pronounced by consent;
- or
- (e) limit the operation of any other enactment or rule of law providing for the award of interest.

9. Section 57 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “Full Court” and inserting in lieu thereof the passage “Supreme Court”;
 - (b) by striking out from subsection (2) the passage “Full Court” and inserting in lieu thereof the passage “Supreme Court”;
- and
- (c) by inserting after subsection (2) the following subsection:—

(3) A question of law reserved for the decision of the Supreme Court by a local court of full jurisdiction shall be decided by the Full Court and a question of law so reserved by a local court of limited or special jurisdiction shall be decided by a Judge of the Supreme Court.

Amendment of
principal Act,
s. 57—

Reservation of
question of
law.

10. Section 58 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “Full Court” and inserting in lieu thereof the passage “Supreme Court”;
- (b) by striking out from subsection (2) the passage “Full Court” and inserting in lieu thereof the passage “Supreme Court”;
- (c) by striking out from subsection (3) the passage “the Full Court, in such special circumstances as the Full Court thinks fit, appeal to the Full Court” and inserting in lieu

Amendment of
principal Act,
s. 58—

Appeal from
local court to
Supreme
Court.

thereof the passage "a Judge of the Supreme Court (which may be granted in such special circumstances as the Judge thinks fit) appeal to the Supreme Court";

and

(d) by inserting after subsection (3) the following subsections:—

(4) Where the proceedings to which the appeal relates are proceedings of a local court of full jurisdiction the appeal shall be to the Full Court, and where those proceedings are proceedings of a local court of limited or special jurisdiction the appeal shall be, in the first instance, to a single Judge of the Supreme Court.

(5) This section does not derogate from the power of a Judge of the Supreme Court to refer an appeal to the Full Court for hearing and determination.

Amendment of
principal Act,
s. 63—
Hearing of
appeal.

11. Section 63 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "Full Court" and inserting in lieu thereof the passage "Supreme Court";

(b) by striking out the passage "Full Court" wherever it occurs in subsection (2) and inserting in lieu thereof, in each case, the passage "Supreme Court";

and

(c) by striking out from subsection (3) the passage "Full Court" and inserting in lieu thereof the passage "Supreme Court".

Amendment of
principal Act,
s. 125—
Proceedings
where one or
both parties do
not attend.

12. Section 125 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsections:—

(2) If, at the time appointed for hearing an action the defendant attends, but not the plaintiff, the court may—

(a) if the defendant admits the plaintiff's claim and pays the court fees, enter judgment for the plaintiff accordingly;

or

(b) order that the action be placed at the bottom of the cause list for the day.

(3) Where the court orders that an action be placed at the bottom of the cause list pursuant to subsection (2) of this section, and the plaintiff is not in attendance when the action is again called on, the court may—

(a) order that the action be struck out (in which case no further proceedings shall be taken in the action unless a Judge or special magistrate reinstates it);

or

(b) adjourn the hearing of the action.

13. Section 127 of the principal Act is amended by striking out the passage “without prejudice to the defendant’s right to elect to proceed under section 125”.

Amendment of principal Act, s. 127—
Court may nonsuit.

14. Section 214 of the principal Act is amended by striking out from paragraph (c) the passage “requests him to do so” and inserting in lieu thereof the passage “requests it to do so”.

Amendment of principal Act, s. 214—
Disposal of interpleader proceedings.

15. Section 234 of the principal Act is amended by striking out from paragraph III of the proviso the passage “under section 97” and inserting in lieu thereof the passage “under section 98”.

Amendment of principal Act, s. 234—
Form of defence.

16. Section 272 of the principal Act is amended by striking out from paragraph (b) the passage “the Local Court Judge” and inserting in lieu thereof the passage “a Local Court Judge”.

Amendment of principal Act, s. 272—
Duty to file claim and pay fees.

17. Section 277 of the principal Act is amended by striking out from subsection (3) the passage “the Local Court Judge” and inserting in lieu thereof the passage “a Local Court Judge”.

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

18. Section 291 of the principal Act is amended by striking out from subsection (2) the passage “by the Judge or special magistrate making the order for the examination, or”.

Amendment of principal Act, s. 291—
Costs.

19. Section 303 of the principal Act is amended by striking out the passage “as hereinafter provided” and inserting in lieu thereof the passage “as provided in this Part”.

Amendment of principal Act, s. 303—
Penalty on taking fees beyond those allowed.

Amendment of
principal Act,
s. 318—
Constitution of
District
Criminal
Courts.

20. Section 318 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (1) the word “Recorder” and inserting in lieu thereof the passage “District Criminal Court Judge”;

and

(b) by striking out from subsection (2) the word “Recorder” and inserting in lieu thereof the word “Judge”.

Amendment of
principal Act,
s. 319—
Division of
State into
districts.

21. Section 319 of the principal Act is amended—

(a) by striking out from paragraph (d) of subsection (2) the passage “Recorder or Recorders” and inserting in lieu thereof the passage “Judge or Judges”;

and

(b) by striking out from subsection (7) the word “Recorder” and inserting in lieu thereof the word “Judge”.

Amendment of
principal Act,
s. 320—
Judges to be
assigned to
districts.

22. Section 320 of the principal Act is amended by striking out the word “Recorders” wherever it occurs and inserting in lieu thereof, in each case, the word “Judges”.

Amendment of
principal Act,
s. 321—
Rules of
Court.

23. Section 321 of the principal Act is amended by striking out from paragraph (a) of subsection (1) the word “Recorders” and inserting in lieu thereof the passage “District Criminal Court Judges”.

Amendment of
principal Act,
s. 322—
Execution of
process.

24. Section 322 of the principal Act is amended by striking out the word “Recorder” and inserting in lieu thereof the word “Judge”.

Amendment of
principal Act,
s. 324—
Appointment
of officers.

25. Section 324 of the principal Act is amended—

(a) by striking out from subsection (4) the word “Recorders” and inserting in lieu thereof the word “Judges”;

and

(b) by striking out from subsection (4) the passage “a Recorder” and inserting in lieu thereof the passage “any other Judge”.

Amendment of
principal Act,
s. 325—
Functions of
principal
Registrar.

26. Section 325 of the principal Act is amended by striking out from subsection (2) the word “Recorder” and inserting in lieu thereof the word “Judge”.

27. Section 326 of the principal Act is amended by striking out from subsection (1) the word "Recorder" and inserting in lieu thereof the word "Judge".
- Amendment of principal Act, s. 326—
Duties of Registrar of Court.
28. Section 327 of the principal Act is amended—
- (a) by striking out from subsection (4) the word "Recorder" and inserting in lieu thereof the word "Judge";
- and
- (b) by striking out from subsection (5) the word "Recorder" and inserting in lieu thereof the word "Judge".
- Amendment of principal Act, s. 327—
Representation of parties.
29. Section 329 of the principal Act is amended by striking out from subsection (1) the word "Recorder" and inserting in lieu thereof the word "Judge".
- Amendment of principal Act, s. 329—
Habitual criminals.
30. Section 330 of the principal Act is amended by striking out from paragraph (b) of subsection (2) the word "Recorder" and inserting in lieu thereof the passage "District Criminal Court Judge".
- Amendment of principal Act, s. 330—
Pleading, practice and procedure of District Criminal Courts.
31. Section 331 of the principal Act is amended by striking out the word "Recorder" and inserting in lieu thereof the word "Judge".
- Amendment of principal Act, s. 331—
Accused to be tried by Judge and jury.
32. Section 332 of the principal Act is amended by striking out from subsection (2) the word "Recorder" and inserting in lieu thereof the word "Judge".
- Amendment of principal Act, s. 332—
Registrar to act as clerk of arraigns.
33. Section 333 of the principal Act is amended—
- (a) by striking out from subsection (2) the word "Recorder" wherever it occurs and inserting in lieu thereof, in each case, the passage "District Criminal Court Judge";
- (b) by striking out from subsection (3) the word "Recorder" and inserting in lieu thereof the passage "District Criminal Court Judge";
- (c) by striking out from subsection (4) the word "Recorder" wherever it occurs, and inserting in lieu thereof, in each case, the passage "District Criminal Court Judge";
- and
- (d) by striking out from subsection (6) the word "Recorder" wherever it occurs and inserting in lieu thereof, in each case, the passage "District Criminal Court Judge".
- Amendment of principal Act, s. 333—
Punishment for contempt.

Amendment of
principal Act,
s. 334—
Powers of
compelling
obedience to
orders.

34. Section 334 of the principal Act is amended—

- (a) by striking out the word “Recorder” wherever it occurs, and inserting in lieu thereof, in each case, the passage “District Criminal Court Judge”;
- and
- (b) by striking out the word “Recorders” and inserting in lieu thereof the passage “District Criminal Court Judges”.

Amendment of
principal Act,
s. 337—
Change of
venue of trial.

35. Section 337 of the principal Act is amended by striking out from subsection (1) the passage “The Senior Judge” and inserting in lieu thereof the passage “A Judge”.

Amendment of
Criminal Law
Consolidation
Act—
Removal of
references to
“Recorder”.

36. (1) The Criminal Law Consolidation Act, 1935-1971, is amended—

- (a) by striking out from the definition of “District Criminal Court” in section 348 the passage “or a Recorder”;
- (b) by striking out the definition of “judge” in section 348 and inserting in lieu thereof the following definition:—
- “judge” means a judge of the Supreme Court or the District Criminal Court;
- (c) by striking out the definition of “Recorder” from section 348;
- (d) by striking out from the definition of “sentence” in section 348 the passage “or Recorder”;
- (e) by striking out the passage “or Recorder” wherever it occurs in subsection (1) and subsection (3) of section 350;
- (f) by striking out from subsection (1) of section 351 the passage “or Recorder”;
- (g) by striking out from paragraph (b) of section 352 the passage “or Recorder” and inserting in lieu thereof the passage “or District Criminal Court”;
- (h) by striking out from section 358 the passage “or Recorder” and inserting in lieu thereof the passage “or District Criminal Court”;
- (i) by striking out from section 360 the passage “or Recorder” wherever it occurs;
- (j) by striking out from section 366 the passage “or Recorder” wherever it occurs;

(k) by striking out from subsection (5) of section 368 the passage “and Recorders” and inserting in lieu thereof the passage “and District Criminal Court Judges”;

and

(l) by striking out from subsection (5) of section 368 the passage “or Recorders”.

(2) The Criminal Law Consolidation Act, 1934-1971, as amended by this section, may be cited as the “Criminal Law Consolidation Act, 1934-1972”.

37. (1) The Evidence Act, 1929-1969, is amended—

Amendment of
Evidence Act—
Removal of
references to
“Recorder”.

(a) by striking out from the definition of “court” in section 4 the word “Recorder”;

(b) by inserting in paragraph (d) of section 52 after the passage “local court judge” the passage “, District Criminal Court Judge,”;

(c) by striking out paragraph (e) of section 52 and the word “and” immediately preceding that paragraph;

and

(d) by striking out from subsection (1) of section 56 the passage “a Recorder” and inserting in lieu thereof the passage “, a local Court Judge, or District Criminal Court Judge”.

(2) The Evidence Act, 1929-1969, as amended by this section, may be cited as the “Evidence Act, 1929-1972”.

38. The Juries Act, 1927-1971, is amended—

Amendment of
Juries Act—
Removal of
references to
“Recorder”.

(a) by striking out from section 3 the definition of “Recorder”;

(b) by striking out from subsection (3) of section 29 the word “Recorder” and inserting in lieu thereof the word “Judge”;

(c) by striking out from paragraph (b) of subsection (4) of section 29 the passage “or Recorder”;

(d) by striking out from subsection (4) of section 29 the passage “or the Recorder” and inserting in lieu thereof the passage “or the Judge”;

(e) by striking out from section 30 the passage “or the Recorder” and inserting in lieu thereof the passage “or the Judge assigned to preside over the District Criminal Court”;

- (f) by striking out from section 31 the word "Recorder" and inserting in lieu thereof the word "Judge";
- (g) by striking out from section 68 the passage "or the Recorder" and inserting in lieu thereof the passage "of the Supreme Court, or the District Criminal Court";
- (h) by striking out from section 79 the passage "or Recorder" wherever it occurs;
- and
- (i) by striking out from subsection (1) of section 88 the passage "or the Recorder" wherever it occurs.

(2) The Juries Act, 1927-1971, as amended by this Act, may be cited as the "Juries Act, 1927-1972".

Amendment of
Justices Act—
Removal of
references to
"Recorder".

39. (1) The Justices Act, 1921-1969, is amended—

- (a) by striking out from subsection (1) of section 4 the definition of "Recorder";
- (b) by striking out from subsection (2) of section 116 the passage "or Recorder";
- (c) by striking out from subsection (3) of section 137 the passage "or Recorder";
- (d) by striking out from subsection (1) of section 141 the passage "or Recorder";
- and
- (e) by striking out from section 142 the passage "or Recorder".

(2) The Justices Act, 1921-1969, as amended by this section, may be cited as the "Justices Act, 1921-1972".

Amendment of
Poor Persons
Legal
Assistance
Act—
Removal of
references to
"Recorder".

40. The Poor Persons Legal Assistance Act, 1925-1969, is amended—

- (a) by striking out from section 3 the passage "or Recorder" wherever it occurs;
- (b) by inserting after subsection (3) of section 3 the following subsection:—

(4) In this section—

"judge" means a Judge of the Supreme Court or the District Criminal Court;

and

(c) by inserting in subsection (1) of section 6 after the passage "Supreme Court" the passage "or the District Criminal Court".

(2) The Poor Persons Legal Assistance Act, 1925-1969, as amended by this section, may be cited as the "Poor Persons Legal Assistance Act, 1925-1972".

41. (1) The Prisons Act, 1936-1971, is amended—

(a) by striking out from section 17 the word "Recorder" and inserting in lieu thereof the word "Judge";

(b) by striking out from subsection (3) of section 24 the word "Recorder";

(c) by striking out from subsection (6) of section 38 the passage "Recorder or";

and

(d) by striking out from section 43 the passage ", Judges who are exercising, or have exercised the jurisdiction, of Recorders" and inserting in lieu thereof the passage "and the District Criminal Court".

(2) The Prisons Act, 1936-1971, as amended by this section, may be cited as the "Prisons Act, 1936-1972".

Amendment of
Prisons Act—
Removal of
references to
"Recorder".

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

J. M. NAPIER, Governor's Deputy