



ANNO TRICESIMO QUARTO

**ELIZABETHAE II REGINAE**

**A.D. 1985**

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**No. 7 of 1985**

**An Act to amend the Local and District Criminal Courts Act, 1926.**

*[Assented to 7 March 1985]*

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

Short title.

1. (1) This Act may be cited as the "Local and District Criminal Courts Act Amendment Act, 1985".

(2) The Local and District Criminal Courts Act, 1926, is in this Act referred to as "the principal Act".

Commencement.

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

Amendment of  
s. 5a—  
Transitional  
provisions.

3. Section 5a of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) Subject to subsection (4), the provisions of this Act as in force immediately before the commencement of the Local and District Criminal Courts Act Amendment Act, 1985, shall continue to apply in respect of a summons (whether ordinary or special) issued before the commencement of that amending Act.

(4) Where an ordinary summons issued before the commencement of the Local and District Criminal Courts Act Amendment Act, 1985, had not been served as at the commencement of that amending Act, the plaintiff may apply to the clerk of the court out of which the summons was issued to have it served by post, and, in that event, the provisions of this Act, as in force after the commencement of the amending Act, shall apply in relation to service of, and appearance to, the summons.

Amendment of  
s. 25—  
Powers and duties  
of Judge and  
special magistrate.

4. Section 25 of the principal Act is amended by inserting after subsection (1) the following subsections:

(2) A judgment given in default of the defendant entering an appearance or attending at a hearing shall not be set aside—

(a) unless the defendant satisfies the Judge or a special magistrate that the summons in the action did not come to his attention;

or

(b) unless the defendant or some person with knowledge of the facts of the case has made and filed an affidavit stating that the defendant has a good defence to the action on the merits and setting out a ground of that defence.

(2a) Where a judgment given in default of an appearance is set aside under this section on the ground that the summons in the action did not come to the attention of the defendant, then, subject to any order of the Judge or special magistrate to the contrary—

(a) where it appears—

(i) that the plaintiff in the claim stated an address for service of the summons that was incorrect in a material particular;

or

(ii) that for any other reason the plaintiff was responsible for the summons not coming to the attention of the defendant,

the costs to the defendant in making the application to set aside the judgment, as determined in accordance with the rules, shall be payable by the plaintiff to the defendant;

(b) the summons shall be deemed to have been served on the defendant at the time that the judgment is set aside;

and

(c) the defendant shall appear to that summons within a period of seven days from that time.

5. Section 26 of the principal Act is amended—

(a) by inserting in paragraph III of subsection (2) after the passage “deliver the same to the bailiff” the passage “(if required to be served by him)”;

and

(b) by inserting after subsection (2) the following subsections:

(3) The clerk of a local court may, by instrument in writing, delegate to any officer of the court any of his powers or functions under this Act.

(4) A delegation under subsection (3)—

(a) may be absolute or conditional;

(b) does not derogate from the powers exercisable personally by the clerk;

and

(c) is revocable at will.

Amendment of  
s. 26—  
Functions and  
duties of clerk.

Amendment of  
s. 27—  
Duties of bailiff.

**6. Section 27 of the principal Act is amended—**

- (a) by striking out from subsection (1) the passage “ordinary or special summons” and substituting the passage “summons which is to be served by post or”;
- (b) by striking out from paragraph IV of subsection (2) the passage “He shall cause” and substituting the passage “Subject to this section, he shall cause”;

and

- (c) by inserting after subsection (2) the following subsections:

(3) Where the person against whom a warrant of execution is to be executed claims that he has not been served with a summons in the action, the bailiff executing the warrant shall serve on him a notice in the prescribed form (unless the person has on a previous occasion been served with such a notice in relation to the same warrant).

(4) A notice served under subsection (3) shall set out a summary of the procedures available under this Act—

(a) for applying to set aside a judgment or order obtained under this Act;

(b) for applying to suspend the execution of the warrant to which the notice relates.

(5) Where a bailiff serves a notice under subsection (3), he shall not proceed to execute the warrant to which it relates until the expiration of the period prescribed by the rules of court.

Amendment of  
s. 80—  
Plaintiff to  
furnish names  
and particulars.

**7. Section 80 of the principal Act is amended—**

- (a) by inserting after subsection (1) the following subsection:

(1a) Where the plaintiff intends that the summons be served on the defendant by post, he may, in addition to stating in the claim the place of residence or business of the defendant, state the address (including the number) of a post office box in order that service may be effected by posting the summons to that address;

- (b) by inserting in paragraph (a) of subsection (3) after the passage “place of residence or business” the passage “or other address”;

and

- (c) by inserting after subsection (3) the following subsection:

(4) A plaintiff who furnishes the clerk with a memorandum under subsection (1) knowing that the address of a place of residence or business or of a post office box contained in the memorandum is incorrect, or being recklessly indifferent as to whether such an address is correct, shall be guilty of an offence.

Penalty: Five hundred dollars.

8. Section 83 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

Amendment of s. 83—  
Summons to issue to defendant.

(1) When the clerk has entered the plaint in the plaint book and furnished a note of that plaint to the plaintiff, he shall forthwith issue a summons to each defendant.

(1a) A summons issued under subsection (1) shall be in the form prescribed by the rules of court that is appropriate to the cause of action.

9. Sections 91 and 92 of the principal Act are repealed.

Repeal of ss. 91 and 92.

10. Section 94 of the principal Act is repealed and the following sections are substituted:

Repeal of s. 94 and substitution of new sections.

94. (1) A summons may be served on the defendant—

Methods by which a summons may be served.

(a) by delivering the summons personally to the defendant or to a person at the defendant's place of residence or business who is apparently above the age of fourteen years;

(b) by sending the summons by ordinary pre-paid post in an envelope addressed to the defendant at—

(i) his place of residence, as stated in the claim;

(ii) his place of business, as stated in the claim;

or

(iii) any other postal address, as stated in the claim;

(c) by serving the summons on a solicitor who, by notice in writing, accepts service of the summons on behalf of the defendant and who undertakes to appear to the summons;

or

(d) in any other manner—

(i) prescribed by the rules;

or

(ii) fixed, on application of the plaintiff, by the court.

(2) Service of a summons under subsection (1) (a) may be effected—

(a) by a bailiff of the court;

(b) by the plaintiff;

(c) by a person employed by the plaintiff;

(d) by a legal practitioner or the clerk of a legal practitioner;

or

(e) by a person who is a licensed process server under the Commercial and Private Agents Act, 1972.

Special provisions  
relating to service  
by post.

(3) Service of a summons under subsection (1) (b) shall be effected by the clerk of the court out of which the summons was issued.

94a. (1) Subject to this section, a summons that is to be served by post shall be deemed to have been served at the time of posting.

(2) Where—

(a) a summons that is to be served by post is returned undelivered;

or

(b) although not returned, the clerk of the court considers on the basis of information received by him (verified, if the clerk so requires, by affidavit) that there is substantial reason to doubt that the summons has come to the attention of the defendant,

service of the summons shall be deemed not to have been effected.

(3) Where an attempt to effect service of a summons by post proves ineffectual by virtue of subsection (2)—

(a) subject to any order of a Judge or special magistrate to the contrary, any judgment given in default of an appearance by the defendant shall, without the necessity of any application by the defendant, be set aside by the clerk;

(b) the clerk shall send to the plaintiff or a solicitor representing the plaintiff written notice of the fact that the attempt to effect service of the summons has proved ineffectual:

and

(c) no further attempt shall be made by the clerk to serve the summons by post to the same address unless the clerk is satisfied that the plaintiff has, on the receipt of the notice referred to in paragraph (b), made reasonable inquiries to ensure that the address for service stated on the summons is the postal address of the defendant.

(4) The clerk may, in order to satisfy himself that the plaintiff has made the inquiries required by subsection (3) (c), require the plaintiff to certify in writing (verified, if the clerk so requires, by statutory declaration) the nature and extent of the inquiries made by him.

(5) Where the clerk of the court considers that by reason of delays in the delivery of mail it is expedient so to do, he may request the Registrar of Courts of Subordinate Jurisdiction to publish a notice in the *Gazette* providing that summonses sent by post on a specified day or days be deemed to have been served at times that are different to the times that the summonses were posted, and—

(a) on receipt of that request the Registrar shall publish the notice as requested;

and

(b) that notice, as published, shall have effect according to its terms.

11. Section 95 of the principal Act is amended by striking out the passage "the same through the post office in a pre-paid letter" and substituting the passage "it by ordinary pre-paid post in an envelope".

Amendment of  
s. 95—  
Service of  
interlocutory  
summons and  
notices.

12. The following section is inserted after section 95 of the principal Act:

Insertion of new  
s. 95a.

95a. (1) Where a summons is served personally by a person other than a bailiff of the court, the person serving the summons shall endorse on a duplicate of the summons the date of service and shall, as soon as practicable after service, swear an affidavit of service and file the duplicate summons and the affidavit with the clerk of the court out of which the summons was issued.

Record of service.

(2) Where a summons is served by post—

(a) in the case of a summons other than an interlocutory summons—the clerk of the court shall endorse or cause to be endorsed on a file copy of the summons a notation that service of the summons has been effected by posting, and the date of posting;

and

(b) in the case of an interlocutory summons—the party serving the summons shall, as soon as practicable after posting the summons, swear an affidavit of service and file the duplicate summons and the affidavit with the clerk of the court out of which the summons was issued.

13. Section 96 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

Amendment of  
s. 96—  
Proof of service.

(2) A notification endorsed on the file copy of a summons that service of the summons was effected by posting by the clerk of the court shall, subject to this Part, be proof of such service.

14. Section 97 of the principal Act is amended—

Amendment of  
s. 97—  
Period allowed  
for appearance.

(a) by striking out subsection (1) and substituting the following subsections:

(1) Subject to this Act, the period to be allowed to a defendant to appear to a summons, when served within the State, shall be twenty-one days.

(1a) Where—

(a) a summons is to be served by post;

and

(b) the address for service of the summons is within a proclaimed area,

the period to be allowed to a defendant to appear to the summons shall be a period exceeding twenty-one days, but not exceeding thirty-five days, as may be declared in relation to that area by proclamation.;

and

(b) by inserting after subsection (2) the following subsections:

(3) In this section—

“proclaimed area” means an area declared by proclamation to be a proclaimed area for the purposes of this section.

(4) The Governor may, if he thinks it appropriate to do so having regard to the infrequency of postal services in a particular area of the State, by proclamation—

(a) declare that area to be a proclaimed area;

and

(b) declare in accordance with subsection (1a) a period which is to be allowed to a defendant to appear to a summons that is served by post at an address within that area,

and may, by subsequent proclamation, vary or revoke any such declarations.

Repeal of s. 106.

**15. Section 106 of the principal Act is repealed.**

Repeal of s. 107 and substitution of new section.

**16. Section 107 of the principal Act is repealed and the following section is substituted:**

Judgment by default.

107. (1) This section applies to an action where the claim is for a liquidated amount, with or without interest.

(2) If the defendant does not enter an appearance in an action to which this section applies, the clerk of the court shall, at the request of the plaintiff, on proof that the summons has been served, sign judgment for the amount claimed in the action together with interest, if the plaintiff so desires, computed in accordance with subsection (3) on so much of the claim as does not consist of interest.

(3) The amount of interest for which judgment may be signed under subsection (3) shall be assessed from the date of filing of the claim to the date of signing judgment and shall be calculated at the rate, if any, alleged by the plaintiff in his claim to have been agreed upon or, if no such rate is alleged, then at the rate prescribed by the rules of court.

Amendment of s. 109—  
When action to be tried.

**17. Section 109 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage “and to subsection (2) hereof”;

and

(b) by striking out subsection (2).

Amendment of s. 175—  
Summons on unsatisfied judgment.

**18. Section 175 of the principal Act is amended—**

(a) by striking out from subsection (3) the word "Such" and substituting the passage "Subject to subsection (3a), the";

and

(b) by inserting after subsection (3) the following subsection:

(3a) The form of summons prescribed by rules of court pursuant to subsection (3) (a) must include a statement that sets out a summary of the procedures available under this Act for applying to set aside a judgment, decree or order obtained under this Act.

19. Section 218 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

Amendment of  
s. 218—  
How summons to  
be served.

(2) If the defendant's whereabouts is not known, a copy of the summons may be posted on some conspicuous part of the premises sought to be recovered and the posting of the copy shall be deemed to be good service on the defendant.

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

D. B. DUNSTAN, Governor